

***United States Court of Appeals
for the Second Circuit***



APPENDIX

74-1345

B
P/S

United States Court of Appeals

For the Second Circuit.

Index No. 68 Civ. 2049 (CMM).

LA FORTUNE, Substituted for JONES & MCKNIGHT, Inc.,
Plaintiff-Appellant,

against

S. S. IRISH LARCH, her engines, etc., IRISH SHIPPING, LTD., CHR.
SALVESEN & CO., LTD., INTERNATIONAL GREAT LAKES
TERMINAL CO., and TRANSOCEANIC TERMINAL CORP.,
Defendants,

and

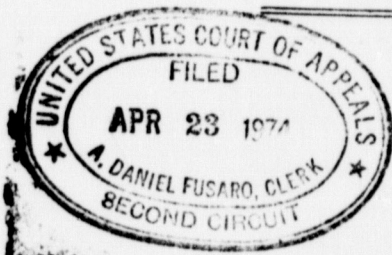
IRISH SHIPPING, LTD.,
Defendant and Third-Party Plaintiff-Appellee,

against

CHR. SALVESEN & CO., LTD., INTERNATIONAL GREAT LAKES
TERMINAL CO., and TRANSOCEANIC TERMINAL CORP.,
Third-Party Defendants.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF NEW YORK.

APPENDIX FOR PLAINTIFF-APPELLANT.



DONOVAN, DONOVAN, MALOOF & WALSH,
Attorneys for Plaintiff-Appellant,
161 William Street,
New York, N. Y. 10038

HEALY & BAILLIE,
Attorneys for Defendant-Appellee,
29 Broadway,
New York, N. Y. 10006

PAGINATION AS IN ORIGINAL COPY

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Docket Entries

68 Civil 2049

**For Admiralty
JONES & MCKNIGHT, INC.**

Plaintiff,

—against—

**S.S. IRISH LARCH, her engines, etc., IRISH SHIPPING, LTD.,
CHR. SALVESEN & CO., LTD., INTERNATIONAL GREAT
LAKES TERMINAL CO., and TRANSOCEANIC TERMINAL
CORP.**

Defendants,

IRISH SHIPPING, LTD.,

Defendant and Third-Party Plaintiff,

—against—

**CHR. SALVESEN & CO., LTD., INTERNATIONAL GREAT LAKES
TERMINAL CO., and TRANSOCEANIC TERMINAL CORP.,**

Third Party Defendants. 6/29/73

DATE

PROCEEDINGS

5-17-68 Filed complaint and issued summons.

3-24-71 Issued additional summons.

4-15-71 Filed additional summons and complaint; served
Irish Shipping Ltd. by Mr. Sipe on 4-5-71.

9-28-72 Filed deft Irish Shipping Ltd. Answer to com-
plaint.

1-12-73 Filed Notice of Motion re: Substitute counsel for
plaintiff. Ret. Room 2201 on 1/26/73 at 10 A.M.

1-12-73 Filed Memorandum of Law in support of plain-
tiff's motion.

Docket Entries

DATE	PROCEEDINGS
1-31-73	Filed Memo End. on motion papers filed 1/12/73. The motion is granted on default. So ordered. Metzner, J.
2-14-73	Filed summons with marshals ret, served, Salverson & Co., Ltd. c/o Nedlloyd Inc. on 2/7/73.
4-3-73	Filed Deft. Irish Shipping Ltd. 'Notice of Motion' re: Order dismissing action for failure to prosecute with reasonable diligence pursuant to FRCP, Rule 41(b) returnable 4/17/73, 10 A.M. & Affidavits of D. J. McNulty and Michael Santoro.
4-3-73	Filed Memorandum of Law in support of Defendant's Motion to Dismiss for failure to prosecute.
4-17-73	Filed Stipulation of Adjournment for Defendant Irish Shipping, Ltd. returnable 4/17/73 is adjourned to 5/15/73. So Ordered Metzner, J.
5-11-73	Filed Memorandum of Law in opposition to Defendant's Motion to dismiss.
5-11-73	Filed Plaintiffs Affidavit in opposition and Memorandum of Law.
5-15-73	Filed Defendant Irish Shipping Ltd.'s Stipulation of Adjournment from 5/15/73 to 5/24/73 Motion pursuant to Rule 41(b). So ordered. Metzner, J.
5-23-73	Filed Reply Affidavit.
6-11-73	Filed 'Memo-End,' on motion dated 4/3/73. After reviewing the papers submitted in connection with this motion to dismiss for failure to prosecute, the motion is denied. So Ordered Metzner, J. (mm).

Docket Entries

DATE	PROCEEDINGS
6-25-73	Filed Order that the defendant Irish Shipping is granted permission to file a third party summons and complaint, etc. Metzner, J. (mn)
6-11-73	Filed affidavit of Michael Santoro in support of application to dismiss.
6-29-73	Filed third party complaint.
7-23-73	Filed summons and Marshals return, served: Chr. Salvesen & Co., Ltd. by R. Scheffler on 7/17/73.
10-17-73	Filed post trial brief on behalf of plaintiff La Fortune, substituted for Jones and McKnight, Inc.
10-18-73	Filed court clerk's minutes. Non-jury trial began on Oct. 10, 1973 and concluded on same date. Decision Reserved.
10-18-73	Filed post trial brief on behalf of plaintiff La Fortune.
9-25-73	Pre-Trial Conference Held.
12-27-73	Filed Opinion #40153 . . . since the defendant has proved to the satisfaction of the Court the application of an "excepted" clause, the complaint must be dismissed. There is a second ground for sustaining a finding in favor of the defendant. It is respectfully clear that the cargo was insufficiently packaged for shipping. Thus, the defendant has proved that it should be relieved of liability under an "excepted" clause. 46:1304(2)(n). So ordered, —Metzner, J. m/n

Docket Entries

DATE	PROCEEDINGS
1-2-74	Filed Judgment and order that defendants SS Irish Larch, her engines, etc., Irish Shipping Ltd., Chr. Salvesen & Co., Ltd., International Great Lakes Terminal Co. and Transoceanic Terminal Corp., have judgment against the plaintiff, La Fortune, sub. et. for Jones & McKnight, Inc., dismissing the complaint, further ordered that the 3rd party complaint is hereby dismissed—Clerk. m/n
1-8-74	Filed notice of entry of judgment.
1-28-74	Filed transcript of record of proceedings 10/10/73.
2-5-74	Filed plaintiff's notice of appeal from judgment and order dismissing complaint. Mailed copies to: Healy & Ballie, Esq., 29 B'way, NYC 10006.
10-9-73	Filed Trial Brief on behalf of Plaintiff, La Fortune, et al.
10-9-73	Filed Proposed Findings of Fact.
2-21-73	Filed Stipulation between parties amending defendant's answer. Amended answer within.
3-12-74	Filed Trial Memo on behalf of Irish Shipping, Ltd.
3-12-74	Filed Post-Trial Memo on behalf of Irish Shipping, Ltd.
3-14-74	Filed Stipulation between parties designating exhibits to be transmitted to USCA.
3-14-74	Filed Stipulation as to True Copy of Judgment and Order to be transmitted to USCA.
3-14-74	Filed notice that the record on appeal has been certified and transmitted to the USCA on 3/14/74.

5a

Summons

FOR THE
SOUTHERN DISTRICT OF NEW YORK
Civil Action File No. 2049

JONES & MCKNIGHT, INC.

Plaintiff,

—against—

S.S. IRISH LARCH, her engines, etc., IRISH SHIPPING, LTD.,
CHR. SALVESEN & Co., LTD., INTERNATIONAL GREAT
LAKES TERMINAL Co., and TRANSOCEANIC TERMINAL
CORP.

Defendants.

To the above named Defendants:

You are hereby summoned and required to serve upon Joseph R. Cannata, Esq., plaintiff's attorney, whose address is 156 William Street, New York, N. Y. 10038, an answer to the complaint which is herewith served upon you, within 20 days after service of this summons upon you, exclusive of the day of service. If you fail to do so, judgement by default will be taken against you for the relief demanded in the complaint.

John Livingston
Clerk of Court.

E. Swanciger
Deputy Clerk.

[SEAL OF COURT]

Date: March 24, 1971

Note:—This summons is issued pursuant to Rule 4 of the Federal Rules of Civil Procedure.

Complaint

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

Index No.

JONES & MCKNIGHT, INC.

Plaintiff,

—against—

**S.S. IRISH LARCH, her engines, etc., IRISH SHIPPING, LTD.,
CHR. SALVESEN & CO., LTD., INTERNATIONAL GREAT
LAKES TERMINAL Co., and TRANSOCEANIC TERMINAL
CORP.**

Defendants,

Plaintiff, herein, by its attorney JOSEPH R. CANNATA, complaining of the above named vessel and the defendants herein, alleges upon information and belief:

FIRST: This is an admiralty action or maritime claim within the meaning of Rule 9 (h) of the Rules of Civil Procedure.

SECOND: Plaintiff is an Illinois corporation with an office and place of business at 20300 South Springfield Avenue, Chicago, Ill. and the owner of the shipment hereinafter described.

THIRD: The SS IRISH LARCH was and now is a vessel employed in the common carriage of goods by water for hire and at all the times herein mentioned was owned, operated, managed, chartered and controlled by the defendants.

Complaint

FOURTH: Defendant Irish Shipping, Ltd. was and is a foreign corporation organized and existing under the Laws of the Irish Republic with an office and place of business in the City of New York.

Defendant Chr. Salvesen & Co. Ltd. was and is a foreign corporation organized and existing under the Laws of Scotland, with an office and place of business in the City of New York.

Defendants International Great Lakes Terminal Co. and Transoceanic Terminal Corp. are both corporations organized and existing under the laws of Illinois.

FIFTH: On or about May 9, 1967 at Antwerp, Belgium there was delivered to said vessel and to the defendants, in good order and condition, a total of 283 bundles wire rods for carriage, transportation and delivery to the port of Chicago, there to be delivered to plaintiff, all in consideration of certain freight charges paid or to be paid.

SIXTH: That thereafter and on or about the 30th day of May, 1967 said vessel arrived at the port of Chicago and defendants made delivery of said shipment but not in the same good order and condition as when received but on the contrary seriously damaged.

SEVENTH: Plaintiff, as consignee of said shipment, brings this action on its own behalf and as agent and trustee on behalf and for the interest of all parties who may become interested in said shipment and is entitled to maintain this action.

EIGHTH: By reason of the premises plaintiff has sustained damages as nearly as the same can now be estimated in the sum of \$15,000. no part of which has been paid although duly demanded.

Complaint

WHEREFORE, plaintiff prays:

1. That process in due form according to law and the practice of this court may issue against the defendants.

2. If the defendant SALVESEN LINES (sued herein as CHR. SALVESEN & CO. LTD. cannot be found within this district, that all of its property within this district in the hands of Nedlloyd Lines, 25 Broadway, New York, N. Y. be attached in the sum set forth in the complaint with interest and costs.

3. That a decree may be entered in favor of plaintiff against the defendants for the amount of plaintiff's damages together with interest and costs.

4. That process in due form according to the practice of this Court may issue against the aforesaid vessel.

5. Plaintiff further prays for such other, further and different relief as to this court may seem just and proper in the premises.

JOSEPH R. CANNATA
Attorney for Plaintiff,
Office & P. O. Address,
156 William Street,
New York, N. Y. 10038
WO 4-5540

(Verified by Joseph R. Cannata on May 17, 1968)

Opinion No. 40153

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

68 Civ. 2049

LA FORTUNE, Substituted for JONES & MCKNIGHT, INC.,
Plaintiff,

—against—

S.S. IRISH LARCH, her engines, etc., IRISH SHIPPING, LTD.,
CHR. SALVESEN & Co., LTD., INTERNATIONAL GREAT
LAKES TERMINAL Co., and TRANSOCEANIC TERMINAL
CORP.

Defendants,

—and—

IRISH SHIPPING, LTD.,

Defendant and Third-Party Plaintiff,

—against—

CHR. SALVESEN & Co., LTD., INTERNATIONAL GREAT LAKES
TERMINAL Co., and TRANSOCEANIC TERMINAL CORP.,

Third Party Defendants.

METZNER, D.J.:

This action for cargo damage was originally instituted by Jones & McKnight, Inc., the purchaser of the shipment. La Fortune was substituted as party plaintiff under the subrogation clause of the insurance contract it issued to the shipper, Cosid, Inc.

Opinion No. 40158

The shipment consisted of 283 coils of "Bright Basic Wire in Thomas Quality." The coils were loaded on May 9, 1967 on the SS Irish Larch, owned by defendant Irish Shipping, Ltd., and under charter to defendant Chr. Salvesen & Co., Ltd. A clean bill of lading with no exceptions was issued by the carrier.

When the coils were delivered in Chicago on May 30, 1967, 181 of them were found to be in a damaged condition. The wrapping was torn, bands were broken, and the wire itself was tangled, bent and dirty.

While the invoice describes the merchandise as bright basic wire in coils, the bill of lading describes it as wire rods in bundles. The latter description allowed the shipper to obtain a freight rate of \$15 a ton against what should have been a rate of \$35 to \$40 a ton.

COGSA is applicable to this case and under its provisions plaintiff established a prima facie case by proving receipt of the coils by the carrier in good order and condition, and delivery in damaged condition at their destination. The burden was then placed on the defendant of proving either that the damage was not due to its negligence or that it was occasioned by one of the "excepted" clauses in 46 U.S.C. § 1304. Subdivision (5) of Section 1304 states in the third paragraph thereof:

"Neither the carrier nor the ship shall be responsible in any event for loss or damage to or in connection with the transportation of the goods if the nature or value thereof has been knowingly and fraudulently misstated by the shipper in the bill of lading."

Opinion No. 40153

Obviously, the shipper knowingly misstated the nature and value of the shipment. Not only is a lesser rate obtained when material is shipped in rods than in coils because rods require less space, but also because the value of rods is different and calls for a different type of handling.

Since the defendant has proved to the satisfaction of the court the application of an "excepted" clause, the complaint herein must be dismissed.

There is a second ground for sustaining a finding in favor of the defendant. It is perfectly clear that the cargo was insufficiently packaged for shipping. Thus, the defendant has proved that it should be relieved of liability under an "excepted" clause. 46 U.S.C. § 1304 (2) (n).

So ordered.

/s/ Charles M. Metzner
CHARLES M. METZNER
U. S. D. J.

Dated: New York, N. Y.
December 27, 1973

Notice of Appeal

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

Index No. 68 Civ. 2049 (CMM)

LA FORTUNE, Substituted for JONES & MCKNIGHT, INC.,
Plaintiff,

—against—

**S.S. IRISH LARCH, her engines, etc., IRISH SHIPPING, LTD.,
CHR. SALVESEN & CO., LTD., INTERNATIONAL GREAT
LAKES TERMINAL CO., and TRANSOCEANIC TERMINAL
CORP.**

Defendants,

—and—

IRISH SHIPPING, LTD.,

Defendant and Third-Party Plaintiff,

—against—

**CHR. SALVESEN & CO., LTD., INTERNATIONAL GREAT LAKES
TERMINAL CO., and TRANSOCEANIC TERMINAL CORP.,**

Third Party Defendants.

Notice is hereby given that LA FORTUNE, Substituted for JONES & MCKNIGHT, INC., plaintiff above named, hereby appeals to the United States Court of Appeals for the Second Circuit from the judgment of the Honorable Charles M. Metzner, United States District Court Judge, United

13a

Notice of Appeal

States District Court for the Southern District of New York, entered January 9th, 1974, dismissing the plaintiff's complaint.

Dated: New York, New York
February 5th, 1974.

DONOVAN, DONOVAN, MALOOF & WALSH
By: /s/ Richard E. Repetto
A Member of the Firm
Attorneys for Plaintiff
Office and P. O. Address
161 William Street
New York, New York 10038

To: Clerk

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK
HEALY & BAILLIE
Attorneys for Defendant,
Irish Shipping, Ltd.
29 Broadway
New York, New York 10006

Plaintiff's Proposed Findings of Fact
UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
Index No. 68 Civ. 2049 CMM

LA FORTUNE, Substituted for JONES & MCKNIGHT, INC.,
Plaintiff,

—against—

**SS IRISH LARCH, her engines, boilers, etc., IRISH SHIPPING,
LTD., CHR. SALVESEN & Co., LTD., INTERNATIONAL GREAT
LAKES TERMINAL Co., and TRANSOCEANIC TERMINAL
CORP.**

Defendants,

—and—

IRISH SHIPPING, LTD.,
Defendant and Third-Party Plaintiff,

—against—

**CHR. SALVESEN & Co., LTD., INTERNATIONAL GREAT LAKES
TERMINAL Co., and TRANSOCEANIC TERMINAL CORP.,**

Third Party Defendants.

PROPOSED FINDINGS OF FACT

- 1) The rights of the parties are governed by the United States Carriage of Goods by Sea Act (COGSA), Title 46 U.S.C. § 1800 *et seq.*, and the provisions of the bill of lading.

Plaintiff's Proposed Findings of Fact

2.) Plaintiff, La Fortune, are subrogated underwriters that insured, under a policy of marine insurance, the cargo carried under bill of lading 6, issued at Antwerp, May 9th, 1967 (Bill of lading 6; Subrogation receipt).

3) At all times material, the SS IRISH LARCH is a vessel, owned, operated, managed and controlled by the defendant. (Answer of defendant, Irish Shipping Ltd., paragraph THIRD).

4) The shipment, which consisted of 283 bundles of wire rods, was received on board the SS IRISH LARCH in good order and condition at Antwerp on May 9th, 1967, for carriage, transportation and delivery in like good order and condition at Chicago, and a clean master's bill of lading, number 6, was issued by the defendant.

5) The SS IRISH LARCH arrived at Chicago on or about May 19th, 1967, berthed at the Transoceanic Terminal and commenced discharging operations. The subject shipment was offloaded from the vessel and placed into the Transoceanic Warehouse on the pier.

6) When the cargo was surveyed and inspected by Mr. M. J. Juric of the General Adjustment Bureau, Inc., prior to delivery, 131 bundles, weighing 157,894 pounds, were found to be bent, dirty, unbanded and tangled to the extent that they were without commercial value and a total loss in the sum of \$8,203.13.

7) The damage to the shipment occurred while the said cargo was in the care, custody and control of the said defendant as a common carrier by water for hire and for which defendant, Irish Shipping, Ltd., has not proved its freedom from negligence nor that the said damage was occasioned by an "excepted cause" under COGSA, Title 46 U.S.C. § 1304 (2).

Plaintiff's Proposed Findings of Fact

PROPOSED CONCLUSIONS OF LAW

1) Plaintiff has established his *prima facie* case by proving that the cargo of wire rods was received by the defendants in good order and condition as evidenced by the master's clean on board bill of lading and delivery in a damaged condition at destination by the survey report of Mr. M. J. Juric and his testimony thereto. *Nichimen & Co. v. M. V. Farland*, (2d Cir. 1972), 426 F.2d 319; *American Tobacco Co. v. The Katingo Hadjipatera*, (2d Cir. 1951), 194 F.2d 449, 452, cert. denied (1952) 343 U.S. 978.

2) Defendant, Irish Shipping, Ltd., has failed to sustain its burden of proving that the damage to the shipment was not due to their negligence or that it was occasioned by one of the "excepted causes" of COGSA, 46 U.S.C. § 1304 (2). *Nichimen Co. v. M. V. Farland*, *supra*.

3) That plaintiff shall recover from defendant, Irish Shipping Ltd., the sum of \$8,203.13 plus interest from June 8th, 1967, and costs and disbursements of this action.

Dated: October 9th, 1973.

New York, New York.

DONOVAN, DONOVAN, MALOOF & WALSH
Attorneys for Plaintiff
Office and P.O. Address
161 William Street,
New York, New York 10038

To:

HEALY & BAILLIE
Attorneys for defendant, Irish Shipping, Ltd.
29 Broadway
New York, New York 10006

Stipulation Amending Defendant's Answer

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

JONES & MCKNIGHT, INC.

Plaintiff,

—against—

**S.S. IRISH LARCH, her engines, etc., IRISH SHIPPING, LTD.,
CHR. SALVESEN & CO., LTD., INTERNATIONAL GREAT
LAKES TERMINAL CO., and TRANSOCEANIC TERMINAL
CORP.**

Defendants,

IT IS HEREBY STIPULATED AND AGREED by and between the attorneys for the plaintiff and defendant Irish Shipping, Ltd., the parties who have appeared herein, that said defendant's Answer be and the same hereby is amended to state that said defendant was the Owner of the S.S. IRISH LARCH at the times mentioned in the Complaint, and to assert a crossclaim against the other named defendants, as appears in the form of Amended Answer annexed hereto.

Dated: New York, New York
February 9, 1973.

/s/ DONOVAN, DONOVAN, MALOOF & WALSH
Donovan, Donovan, Maloof & Walsh
Attorneys for Jones & McKnight, Inc.

/s/ HEALY & BAILLIE
Healy & Baillie
Attorneys for Irish Shipping Ltd.

Amended Answer

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

JONES & MCKNIGHT, INC.,

Plaintiff,

—against—

**S.S. IRISH LARCH, her engines, etc., IRISH SHIPPING, LTD.,
CHR. SALVESEN & Co., LTD., INTERNATIONAL GREAT
LAKES TERMINAL Co., and TRANSOCEANIC TERMINAL
CORP.**

Defendants.

Defendant, IRISH SHIPPING, LTD., by its attorneys,
HEALY & BAILLIE, Answering the complaint herein, alleges:

1. Admits the allegations of Paragraph "First" of the complaint.
2. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraphs "Second" and "Seventh" of the complaint.
3. Answering Paragraphs "Third" and "Fourth" of the complaint, admits that Irish Shipping Ltd. is a foreign corporation and was the Owner of the Irish Larch at the times mentioned in the complaint, denies having an office in New York City, and denies knowledge or information sufficient to form a belief as to the truth of the remaining allegations thereof.
4. Answering Paragraphs "Fifth" and "Sixth" of the complaint, admits that a certain cargo of wire rods was delivered to the Irish Larch at Antwerp for delivery to

Amended Answer

Chicago, but, except as specifically admitted denies the remaining allegations thereof.

5. Denies the allegations of Paragraph "Eighth" of the complaint.

AS AND FOR A FIRST AFFIRMATIVE DEFENSE, DEFENDANT ALLEGES UPON INFORMATION AND BELIEF

6. The shipment which is the subject of the complaint was transported on the said Vessel subject to the contractual terms and conditions of the bills of lading and/or applicable filed tariffs.

Any shortage, loss and/or damage to the goods was due to causes for which this defendant is not liable or responsible by virtue of the provisions of the United States Carriage of Goods by Sea Act, the Harter Act and/or bills of lading and/or applicable filed tariffs.

AS AND FOR A SECOND AFFIRMATIVE DEFENSE, DEFENDANT ALLEGES UPON INFORMATION AND BELIEF

7. This action was commenced and process served upon this defendant more than one year after delivery of the cargo herein and this action is barred by the one year limitations period provided at 46 USC § 1303(6) for cargo claims.

AS AND FOR A THIRD AFFIRMATIVE DEFENSE, DEFENDANT ALLEGES UPON INFORMATION AND BELIEF

8. Service of the summons and complaint in this action upon this defendant was not attempted until April 4, 1971, more than three years after filing the complaint and four years after delivery of the cargo, although this defendant has been amenable to service since the action accrued. Defendant's ability to investigate and defend this claim

Amended Answer

has been prejudiced by such delay and for this reason the complaint against this defendant should be dismissed.

**AS AND FOR A CROSS CLAIM DEFENDANT ALLEGES
UPON INFORMATION AND BELIEF**

9. If any damage was sustained to the cargo which is the subject of the complaint herein, such damage was caused solely by the fault or negligence of defendant Chr. Salvesen & Co. Ltd., who was the Charterer of the S.S. Irish Larch at the time specified in the complaint, or its agents or employees, and/or that of the other defendants, and was not caused or contributed to by any fault or negligence of the officers or crew of the S.S. Irish Larch or by Irish Shipping, Ltd. or any of its agents or employees.

10. By reason of the foregoing, defendant Irish Shipping, Ltd. is entitled to be indemnified by the other defendants for the full amount of any liability to which it may be held herein, and for the costs of defending this action.

WHEREFORE, defendant Irish Shipping, Ltd. prays that the complaint against it be dismissed with costs, or, if said defendant be held liable in whole or in part to the plaintiff, that the other defendants be adjudged liable to Irish Shipping, Ltd. for the amount thereof and for the costs of defending this action.

HEALY & BAILLIE

Attorneys for Irish Shipping Ltd.

By /s/ **BRUCE A. MCALLISTER**

A Member of the Firm

29 Broadway

New York, New York 10006

Stipulation as to True Copy of Judgment and Order

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

Index No. 68 Civ. 2049 CMM

LA FORTUNE, Substituted for JONES & MCKNIGHT, INC.,
Plaintiff,

—against—

**SS IRISH LARCH, her engines, boilers, etc., IRISH SHIPPING,
LTD., CHR. SALVESEN & Co., LTD., INTERNATIONAL GREAT
LAKES TERMINAL Co., and TRANSOCEANIC TERMINAL
CORP.,**

Defendants,

IRISH SHIPPING, LTD.,

Defendant and Third-Party Plaintiff,

**CHR. SALVESEN & Co., LTD., INTERNATIONAL GREAT LAKES
TERMINAL Co., and TRANSOCEANIC TERMINAL CORP.**

Third Party Defendants.

Sirs:

IT IS HEREBY STIPULATED AND AGREED by and between the attorneys for the respective parties herein that the Judgment annexed hereto is a true copy of the Judgment and Order filed January 2, 1974, concerning the above entitled action.

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Stipulation as to True Copy of Judgment and Order

Dated: New York, New York.
March 14th, 1974.

DONOVAN, DONOVAN, MALOOF & WALSH

By: /s/ CHARLES C. GOODENOUGH

Charles C. Goodenough

Attorney for Plaintiff

HEALY & BAILLIE

By:

Attorneys for Defendant, Irish Shipping,
Inc.

Judgment

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
68 Civil 2049 (CMM)

LA FORTUNE, Substituted for JONES & MCKNIGHT, INC.,
Plaintiff,

—against—

S.S. IRISH LARCH, her engines, boilers, etc., IRISH SHIPPING,
LTD., CHR. SALVESEN & Co., LTD., INTERNATIONAL GREAT
LAKES TERMINAL Co., and TRANSOCEANIC TERMINAL
CORP.,

Defendants,

—and—

IRISH SHIPPING, LTD.,
Defendant and Third-Party Plaintiff,

—against—

CHR. SALVESEN & Co., LTD., INTERNATIONAL GREAT LAKES
TERMINAL Co., and TRANSOCEANIC CORP.,

Third-Party Defendants.

The issues in the above entitled action having been brought on regularly for trial before the Honorable Charles M. Metzner, United States District Judge, on October 10, 1973, and at the conclusion of the evidence the Court having reserved decision, and the Court thereafter on December 27,

Judgment

1973, having handed down its opinion in favor of the defendants dismissing the complaint, it is,

ORDERED, ADJUDGED AND DECREED, that defendants, SS IRISH LARCH, her engines, boilers, etc., IRISH SHIPPING, LTD., CHR. SALVESEN & Co., LTD., INTERNATIONAL GREAT LAKES TERMINAL Co., and TRANSOCEANIC TERMINAL CORP., have judgment against the plaintiff, LA FORTUNE, Substituted for JONES & MCKNIGHT, INC., dismissing the complaint, and it is further,

ORDERED, that the third-party complaint against the third-party defendants, CHR. SALVESEN & Co., LTD., INTERNATIONAL GREAT LAKES TERMINAL Co., and TRANSOCEANIC TERMINAL CORP., be and it hereby is dismissed.

Dated: New York, N. Y.
January 2, 1974

/s/ RAYMOND F. BURGHARDT
Clerk

jks

TRANSCRIPT.

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

-----x
LA FORTUNE, Substituted for
Jones & McKnight, Inc.,

Plaintiff,

vs.

68 Civ. 2049

S.S. IRISH LARCH, etc.,
IRISH SHIPPING, LTD., et al.,

Defendants.

Before:

HON. CHARLES M. METZNER,

District Judge.

New York, October 10, 1973;
10.20 o'clock a. m.
(Room 705)

APPEARANCES:

DONOVAN, DONOVAN, MALOOF & WALSH, Esqs.,
Attorneys for Plaintiff;
By: CHARLES GOODENOUGH, Esq., and
RICHARD REPETTO, Esq.,
Of Counsel.

HEALEY & BAILEE, Esqs.,
Attorneys for Defendants;
By: JACK A. GREENBAUM, Esq.,
Of Counsel.

1 jks

2 THE CLERK: Jones & McKnight versus the S.S.

3 Irish Larch.

4 Plaintiff ready?

5 MR. GOODENOUGH: Ready.

6 THE CLERK: Defendants ready?

7 MR. GREENBAUM: Ready.

8 THE COURT: I gather than the name of the case
9 is now La Fortune, is it not, in view of the order that was
10 entered?

11 MR. GOODENOUGH: Yes, sir.

12 THE COURT: All right. Put your first witness
13 on.

14 MR. GOODENOUGH: Mr. Edward Delbourgo.

15 - -

16 E D W A R D D A N I E L D E L B O U R G O , called
17 as a witness by the plaintiff, having been first duly
18 sworn, testified as follows:

19 THE COURT: You may proceed, Mr. Goodenough.

20 DIRECT EXAMINATION

21 BY MR. GOODENOUGH:

22 Q Mr. Delbourgo, by whom are you employed?

23 A CoSid, Incorporated.

24 Q In what capacity, sir?

25 A Vice-president.

jks

Delbourgo-direct

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Q How long have you been so employed?

A For about eight years.

Q And in May of 1967 were you employed in that capacity?

A I was.

Q And generally, what are the nature of your duties?

A Well, as a vice-president I am in charge of supervising everything, all the operations of our company. whether for import or export. We are engaged in import and export of steel.

Q And during the course of your duties, then, you would oversee the import end of your business, is that correct?

A Actually I specialize more on the export side, but I know of what goes on imports as well, of course.

Q And import documents would pass through your hands?

A They would, yes.

Q Mr. Delbourgo, I show you this document.

Would you identify it for the Court, please?

A This is an invoice from our purchasing agents in France, in Paris, France, for consignment of wire which we imported in 1967.

1 jks

2 THE COURT: Have it marked for identification,
3 please.

4 (Plaintiff's Exhibit 1 was marked for
5 identification.)

6 Q Do you recall if that particular invoice passed
7 through your hands?

8 A I do.

9 Q Did it?

10 A Yes, sir.

11 Q Does this invoice cover the cargo which is the
12 subject of this suit?

13 A Yes, sir.

14 MR. GOODENOUGH: May I have it marked in
15 evidence?

16 MR. GREENBAUM: May I look at that?

17 THE COURT: Show it to him.

18 (Plaintiff's Exhibit 1 was received in
19 evidence.)

20 Q Mr. Delbourgo, I show you this second document.
21 Would you identify it to the Court, please?

22 A This is the bill of lading that relates to the
23 same invoice for the same consignment of wire.

24 Q What is the bill of lading number, sir?

25 A Bill of lading No. 6.

1 jks

2 Q Dated?

3 A Dated May 9, 1967.

4 Q At?

5 A Antwerp, Belgium.

6 MR. GOODENOUGH: Mark that for identification.

7 (Plaintiff's Exhibit 2 was marked for
8 identification.)

xx 9 THE COURT: Any objection?

10 MR. GREENBAUM: No objection, your Honor.

11 (Plaintiff's Exhibit 2 was received in
xx 12 evidence.)

13 THE COURT: You may proceed.

14 Q Mr. Delbourgo, I again refer you to Plaintiff's
15 Exhibit 2, the bill of lading.

16 Would you be so kind to read it and see if it
17 identifies a vessel?

18 A It does identify the vessel Irish Larch.

19 THE COURT: The document speaks for itself.

20 Q Mr. Delbourgo, did there come a time when the
21 cargo, upon arrival at its destination --

22 MR. GOODENOUGH: Strike that.

23 Q Did there come a time that you were apprised of
24 a condition involving the cargo upon its arrival at
25 destination?

jks

1 A Yes.

2 Q Were there problems with the cargo?

3 A Yes, the cargo had arrived --

4 MR. GREENBAUM: Objection.

5 THE COURT: Well, to what?

6 MR. GREENBAUM: I would like to know who apprised
7 him and under what circumstances. This may all be hearsay.

8 THE COURT: I assume part of it is hearsay,
9 but aren't you aware of what went on? You have had this
10 man on deposition, have you not?

11 MR. GREENBAUM: I have not.

12 THE COURT: You have not? Why not?

13 MR. GREENBAUM: Your Honor is aware of the
14 problems we have had with this case, the delays.

15 THE COURT: That is your fault. That is
16 nobody else's fault.

17 Who is going to be your main witness on the
18 condition?

19 MR. GOODENOUGH: Cargo surveyor, sir.

20 THE COURT: Well, then, have him do it.

21 You don't need to ask him this question.

22 Q Mr. Delbourgo, was CoSid paid by underwriters
23 for damage to the cargo?

24 A Yes, sir.

jks

Delbourgo-direct

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Q I show you this document, sir. Would you identify it to the Court?

A Yes. This is a subrogation document which we signed to the insurance company at the time when we arrived at the settlement with them on the claim that we had presented to the underwriters.

Q What is the name of the underwriters, sir?

A It was La Fortune, as I know. It doesn't mention it here on this document. It just refers to the insurers, as I read it.

Q And whose signature is on the bottom of the subrogation receipt?

A My signature, sir.

Q That is your signature?

A Yes, sir.

MR. GOODENOUGH: For identification, please.

(Plaintiff's Exhibit 3 was marked for identification.)

MR. GREENBAUM: No objection.

(Plaintiff's Exhibit 3 was received in evidence.)

Q Mr. Delbourgo, do you recall the amount underwriters paid to CoSid for the damage?

A It was something like about \$10,000.

1 jks
2 Q I show you another document, sir.

3 Would you identify it to the Court?

4 A Yes. It is likewise an act of subrogation,
5 this time mentioning the actual name of the insurance
6 company as La Fortune, and the amount that we, by that
7 document, acknowledge having received, and pertaining to
8 a shipment on the Irish Larch.

9 THE COURT: Does it refresh your recollection as
10 to how much they paid you?

11 THE WITNESS: Yes.

12 THE COURT: How much?

13 THE WITNESS: \$10,052.19.

14 THE COURT: All right. Any objection?

15 MR. GREENBAUM: No objection, your Honor.

16 (Plaintiff's Exhibit 4 was received in
17 evidence.)

18 MR. GOODELOUGH: We have no further questions
19 of Mr. Delbourgo.

20 THE COURT: Any cross-examination, Mr. Greenbaum?

21 CROSS EXAMINATION

22 BY MR. GREENBAUM:

23 Q Mr. Delbourgo, who obtained the insurance policy
24 at issue here?

25 A Well, we had this open cover with La Fortune.

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Q What is the name of the company which has the open cover policy?

A I think it's Continentale Des Produits Siderurgiques.

Q They are located in France?

A In France, yes.

Q What is the relationship between CoSid France and CoSid, Inc.?

A They are our purchasing agents.

Q Are they affiliated companies or is one a subsidiary of the other?

A No, they are stockholders in CoSid, Inc. They were stockholders in CoSid, Inc.

Q CoSid France hold stock in CoSid, Inc.?

A That's right.

Q Are the individuals who own stock of CoSid France also owners of the stock of CoSid, Inc.?

A Some of them. Not the entire.

Q I see. Who is the loss payee under the insurance policy?

A CoSid, Inc.

Q That is CoSid New York?

A Yes.

Q Who arranged for the sale of this cargo?

1 jks
2 A Here in New York, here in the United States?

3 Q Yes.

4 A Yes, we sold it.

5 Q CoSid, Inc.?

6 A Yes.

7 Q And who is the ultimate purchaser of this cargo?

8 A Jones & McKnight.

9 Q Was this a C.I.F. sale?

10 A I can't recall now, sir.

11 MR. GREENBAUM: May I see Exhibit 1?

12 Q Sir, would you refer to this, please, and refresh
13 your recollection, if you can.

14 A Well, this actually is -- yes, it is the C.I.F.
15 invoice, yes, that's correct.

16 Q And the purchaser is Jones & McKnight?

17 A Yes, sir.

18 Q Sir, are you aware at what point title to
19 property passes under C.I.F. sale?

20 A Yes, I am aware, yes.

21 Q Would you tell me, sir, what the answer to that
22 is?

23 A Well, with the submission of the full documents,
24 including the bill of lading and the insurance certificate.

25 Q Sir, isn't it a fact that title passes upon the

1 jks

Delbourgo-cross

11

2 lading of the vessel?

3 A What do you mean by the lading of the vessel?

4 Q The loading of the vessel in Antwerp, is that
5 not the point at which title passes?

6 A I wouldn't know, sir.

7 Q Do I understand that La Fortune makes claim here,
8 pursuant to the subrogation receipt issued by CoSid, Inc.?

9 A Yes.

10 Q Assuming that title passed to Jones & McKnight
11 upon the loading of the vessel, would it be a fact, would
12 you agree, that CoSid, Inc. had no property in the cargo
13 at the time that it received payment from La Fortune?

14 A If that is the correct interpretation, yes.

15 Q Would it not follow that La Fortune did not
16 become subrogated to any claim in this cargo?17 THE COURT: Why did you default on the motion
18 to substitute?19 MR. GREENBAUM: Your Honor, I wasn't aware of
20 this C.I.F. contract at that time.

21 THE COURT: Why not?

22 MR. GREENBAUM: I received knowledge of that --

23 THE COURT: This case is 1968. It is five
24 years old. I can't take any excuses, not being aware
25 of what is in the lawsuit.

1 jks

2 MR. GREENBAUM: Well, your Honor, the fact
3 remains, whether we objected or not, I don't think a
4 matter of title and right can be waived. If there is no
5 ownership, there is no cause of action.

6 THE COURT: I am sure if you thought that was true
7 you should have objected, and I am taking into consider-
8 ation the fact that you did not object. In fact, you
9 defaulted on the motion when they said they were the real
10 party in interest. If you are not aware of the facts,
11 that is your fault, because you had five years to learn
12 the facts in this case.

13 MR. GREENBAUM: That is not the case, your
14 Honor.

15 THE COURT: It is the case. This case is
16 dated 1968.

17 MR. GREENBAUM: Well, as your Honor knows, the
18 defendant shipowner contends we did not receive service
19 of process until, I believe it was, late 1972 or early
20 1973.

21 THE COURT: Go ahead.

22 BY MR. GREENBAUM:

23 Q Sir, I am going to show you the invoice marked
24 as Plaintiff's Exhibit 1 again.

25 Would you please tell me how the cargo is

1 identified in that invoice?

2 A Well, it is identified by marks and description.

3 Q How is the cargo described, sir?

4 A Bright basic wire in Thomas Quality.

5 Q Do you know what Thomas Quality means?

6 A It is a process of steel producing.

7 Q And how is this packaged? Was that packaged
8 in coils according to the invoice?

9 A According to the invoice it was packaged in
10 coils.

11 Q I am going to show you the bill of lading marked
12 as Plaintiff's Exhibit 2.

13 Would you tell me how the cargo is identified in
14 or described in that exhibit?

15 A It is described as wire rods in bundles.

16 Q Sir, to your knowledge, is there a difference
17 between wire rods packaged in bundles and bright basic wire
18 packed in coils?

19 A Well, coils are what the word says. The wire
20 is coiled up in sort of rolls and bundles could be anything.

21 Q To your knowledge, is there a difference in the
22 freight rate applying to bundles as opposed to coils?

23 A There could be.

24 THE COURT: Was there in this case?
25

1 jks

2 THE WITNESS: I wouldn't know, sir. We didn't
3 arrange the freight.

4 THE COURT: Who did?

5 THE WITNESS: The shippers.

6 Q Is there, to your knowledge, a difference in
7 the manner of handling the two sorts of cargoes, the
8 standard of care necessary in handling?

9 A I would imagine that all cargoes should be
10 cared for in the same manner, irrespective of the way it
11 is --

12 Q Sir, I don't suppose you would contend that eggs
13 should be handled the same as steel, and I am asking if
14 you are aware of any qualitative difference between these
15 cargoes, the specific cargoes we are discussing.

16 A No. I am not aware, sir.

17 Q Is there a difference in the material or the
18 quality or the purchase price between wire rods and bright
19 basic wire?

20 A Well, bright basic wire is a product that has
21 been further processed than just plain wire rods.

22 Q Is bright basic wire of a greater value than
23 wire rods?

24 A It is, sir.

25 Q Then when the cargo was described as wire rods

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Delbourgo-cross

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1 in bundles in the bill of lading was that not an erroneous
2 description?
3

4 A I really can't say whether it was erroneous or
5 not.

6 Q Well, sir, you have testified that --

7 A As I just said, a bundle can also be a coil.

3 8 Q You have also said that wire rods are a less
9 dear commodity than bright basic wire?

10 A That's true.

11 Q If that is the case, was there not an erroneous
12 description in the bill of lading?

13 A Yes, there was.

14 Q Do you know if there is a difference in the
15 amount of space taken up aboard a vessel between coils of
16 bright basic wire and bundles of wire rods?

17 A Yes, obviously bundles would occupy less space
18 than coils.

19 Q In your experience is it not a fact that freight
20 rates are based on the amount of space a cargo takes up?

21 A Yes, that is true.

22 Q And would it then follow that the freight rate
23 for coils is greater than the freight rate for bundles?

24 A It is logical.

25 THE COURT: Bundles take less space than coils?

1 THE WITNESS: Yes, sir.

2 THE COURT: And therefore the frieght rate for
3 bundles would be less than for coils?
4

5 THE WITNESS: Yes.

6 Q Sir, are you familiar with the method of binding
7 these coils?

8 A Coils must usually be bound in at least three
9 places, about equal distance.

10 Q In a specific case, do you know the actual
11 material used to bind the coils?

12 A I don't know, no, sir.

13 Q Sir, did CoSid subsequently ship another cargo
14 of wire coils from Antwerp to Chicago, I think --well, to
15 the same consignee, also aboard the Irish Larch? This
16 would be in August 1967.

17 A I have no recollection, but it could be.

18 Q Isn't it a fact that CoSid changed its method
19 of binding the wire coils after the cargo at issue was
20 shipped?

21 A Again, I have no recollection, sir.

22 Q Did you or did anyone that you know of at CoSid
23 have discussions or correspondence with Transoceanic
24 Terminals concerning the reconditioning of the cargo at
25 issue?

1 jks

2 A Yes, there was a lot of correspondence with
3 Transoceanic at the time, yes.

4 Q Could you tell me in your own words what the
5 substance of that was?

6 A I really can't recall now. I have not been
7 prepared for this at all, and I haven't gone through the
8 file of this particular --

9 Q That's all right.

10 Do you recall whether or not CoSid received
11 invoices from Transoceanic Terminals for re Coopering
12 charges?

13 A It is possible. I just can't remember.

14 Q In that case, I suppose you would not know
15 whether CoSid paid such charges?

16 A I don't know, sir.

17 Q Sir, what is the amount of CoSid's claim in
18 this proceeding?

19 A Well, it was about \$10,000.

20 Q Is that all for the depreciation in the market
21 or do you know how that claim has been arrived at?

22 A I think there was depreciation in market value,
23 and it was also to compensate for, I think, straightening
24 back the material and putting it back in shape.

25 Q Well, who put it back in shape, sir?

1 jks

Delbourgo-cross

2 A It was some firm involved that we at the time
3 got in contact with who did the job.

4 Q Do you recall the amount of that charge?

5 A I can't recall now, sir.

6 Q Did CoSid pay for such re Coopering, recondition-
7 ing?

8 A Could have paid. They must have paid. I don't
9 know.

10 Q Do you have with you the correspondence either
11 with the firm who did the reconditioning or with --

12 A No.

13 Q Correspondence in which you made claim against
14 La Fortune?

15 A No, I didn't bring that in.

16 MR. GREENBAUM: I have no further questions,
17 your Honor.

18 THE COURT: Any redirect?

19 MR. GOODENOUGH: Yes.

20 REDIRECT EXAMINATION

21 BY MR. GOODENOUGH:

22 Q Mr. Delbourgo, do you know if Jones & McKnight
23 accepted delivery of the cargo that was damaged?

24 A No, sir, they did not accept it.

25 Q Do you know if Jones & McKnight paid CoSid for

1 jks

2 the damaged cargo?

3 A No. If they did not accept the material,
4 obviously they haven't paid.

5 MR. GOODENOUGH: No further questions, your
6 Honor.

7 RECROSS EXAMINATION

XX 8 BY MR. GREENBAUM:

9 Q Who decided that this cargo was not to be
10 accepted, and when was that?

11 A Well, the consignee refused it.

12 Q Jones & McKnight?

13 A Yes.

14 Q Did they send somebody to the pier at the time
15 of discharge? Do you know that for a fact?

16 A I don't know.

17 Q Did CoSid send anybody to the pier at the time
18 of discharge?

19 A We sent the surveyor.

20 Q I mean at the time of discharge.

21 A No, I don't think so.

22 MR. GREENBAUM: Thank you.

23 A (Continuing) We may have sent our agent --
24 I'm sorry. We may have sent our agent.

25 Q But you don't know?

jks

A I don't recall now.

Q What was the name of your agent?

A In Chicago I think it was Larry Mervis.

MR. GREENBAUM: Thank you.

(Witness excused.)

THE COURT: Next witness.

MR. GOODENOUGH: Mr. Melvin J. Juric.

- -

M E L V I N J. J U R I C , called as a witness

by the plaintiff, having been first duly sworn,

testified as follows:

DIRECT EXAMINATION

BY MR. GOODENOUGH:

Q Mr. Juric, how are you employed, sir?

A General Adjustment Bureau.

Q In what capacity?

A As an adjuster.

Q How long have you been so employed?

A 28-1/2 years.

Q Were you employed in that capacity in June of
1967?

A Yes, sir.

Q At that time did you have occasion to survey a
shipment of steel rods or coils on the premises of the

jks Juric-direct

Transoceanic Terminals, Chicago?

A Yes, sir.

Q Mr. Juric, before we go into your survey, perhaps we should discuss your background.

Have you ever surveyed steel shipments prior to this particular shipment?

A Yes.

Q For how many years, sir?

A Three and a half years.

Q And how long have you been in the adjustment field prior to that?

A About eleven years.

Q Was that part of that time in a supervisory capacity?

A Yes, sir.

Q Mr. Juric, I show you these documents. There are in all three, three documents.

Would you identify them to the Court, please.

A These are the forms that I prepared for survey purposes. They are forms provided by my employer.

Q They are more or less of a check list?

A Yes.

Q Is this particular survey addressed to the

1 jks

2 cargo on this bill of lading, that is, bill of lading 6,
3 Plaintiff's Exhibit 2?

4 A Yes.

5 Q Mr. Juric, as part of your survey did you have
6 occasion to take photographs of the cargo?

7 A Yes, I did.

8 Q I show you four pages containing seven photo-
9 graphs.

10 Would you look at them, sir, and tell the Court
11 whether or not those are the photographs you took at the
12 time you made the survey.

13 A Yes, these are the nine photographs that I took
14 with my Polaroid camera.

15 MR. GOODENOUGH: I would ask that the survey
16 and the accompanying photographs be marked for identifica-
17 tion.

18 (Plaintiff's Exhibit 5 was marked for
19 identification.)

20 THE COURT: Show them to Mr. Greenbaum.

21 Q Mr. Juric, I leave your survey report in front
22 of you for purpose of refreshing your recollection.
23 I realize that a long period of time has elapsed since
24 you performed the survey.

25 But if you would tell the Court, please, the

2 condition of the cargo that you found when you surveyed
3 the shipment?

4 MR. GREENBAUM: Your Honor, I want to find out
5 when Mr. Juric surveyed the shipment and when that was in
6 relation to the discharging date.

7 THE COURT: All right.

8 Q When was the shipment discharged? When did
9 you survey it?

10 A I surveyed -- I do not know when the shipment
11 was discharged, but I do know that the survey was prepared
12 on June 14, 1967.

13 Q Mr. Juric, when were you retained to perform the
14 survey?

15 A On June 9, 1967.

16 Q So a five-day period elapsed.

17 Do you recall if that five-day period included
18 a weekend?

19 A I do not recall.

20 Q Where did you perform this survey?

21 A At the Transoceanic warehouse facilities in
22 Chicago, Illinois.

23 Q Whose facility is that? If you know.

24 A Transoceanic.

25 Q What function do they perform?

1 jks

2 A They are a terminal situated adjacent to the
3 slip in the Calumet river.

4 Q Are they terminal and stevedore operators?

5 A Yes, sir.

6 Q Would you tell the Court now what was your
7 observations as regards the cargo?

8 MR. GREENBAUM: I am going to object because
9 the survey report itself states that discharging was com-
10 pleted on May 24, 1967, survey was held on June 14, 1967,
11 and unless we can link up the condition of the cargo at the
12 time of discharge with the condition three weeks later --

13 THE COURT: I will take it subject to connection.

14 Q Mr. Juric, do you know if the consignee ever
15 took custody of this cargo?

16 A I do not know.

17 Q Have you made other surveys for other accounts
18 at the Transoceanic Terminal in Chicago?

19 A Yes, sir.

20 Q Is that a consignee's warehouse or is that
21 generally the ocean carrier's warehouse?

22 A Ocean cargo warehousing facilities.

23 THE COURT: Well, they could be independent
24 warehousing, too.

25 MR. GOODENOUGH: Yes. What we are trying to

1 jks

2 show here, your Honor, is that the consignee never took
3 delivery of the cargo. It remained at all times in the
4 custody of the ocean carrier or his agent, Transoceanic
5 Terminals.

6 MR. GREENBAUM: Mr. Juric has already testified
7 that he has no knowledge of that.

8 THE COURT: That's true.

9 Q Mr. Juric, would you tell the Court the extent
10 of the damage that you found upon inspection of the cargo at
11 the Transoceanic Terminals?

12 A The coils of wire were not in their normal coiled
13 condition. They were strewn around the area. The wire
14 was bent. Bales were opened to the point where they could
15 not be recognized as the weight per bale. They could not
16 be recognized as to their identification by color and in
17 some instances there was some rust setting in, and there
18 were bales or coils which were wrapped in burlap, there
19 were coils that were wrapped in a moistureproof paper, and
20 there were coils that were unwrapped.

21 Q With regard to those coils that were wrapped,
22 did the wrapping in any way disguise the nature of the
23 commodity inside it?

24 A Yes.

25 Q It did disguise it?

jks

A Yes, sir.

Q In what respect, sir?

A The entire coil of wire was covered.

Q Was that for protective purposes?

A I must assume so.

Q But it still retained its identity as a coil?

A Yes.

Q Mr. Juric, what was your estimate of the extent of the damage you found on the survey? Please refer to your report to refresh your recollection.

A I indicated a total loss.

Q Total loss of the entire shipment?

A No.

Q A total loss of what, sir?

A To 131 coils.

Q And the weight of the 131 coils was what, sir?

A There were two categories or two classifications of double O gauge amounting to 47 coils or 59,318 pounds.

THE COURT: Weight, double O gauge -- how many coils?

THE WITNESS: 47.

THE COURT: Weight?

THE WITNESS: 59,318 pounds, at a cost of \$3612.47.

jks

THE COURT: When you say at a cost of, what do you mean by "at a cost of"?

THE WITNESS: Pardon?

THE COURT: When you say "cost of", what do you mean by "cost of"?

THE WITNESS: That is the invoice value.

THE COURT: All right.

Go ahead.

A O gauge of 84 coils, 98,666 pounds, invoice value, \$8759.40.

THE COURT: Go ahead.

A The 47 coils had red tags and the 84 coils with yellow tags.

MR. GOODENOUGH: Your Honor, I note we have not marked the survey report and photographs in evidence. I would offer it in evidence at this time.

THE COURT: Mr. Greenbaum?

MR. GREENBAUM: I won't object to that.

(Plaintiff's Exhibit 5 was received in evidence.)

Q Mr. Juric, do you know what happened to the damaged cargo, what disposition was made of it?

A No, I do not.

MR. GREENBAUM: Object.

jks

Q Mr. Juric, in your opinion was there any surviving value to this cargo, the damaged cargo, that is?

A Yes.

Q What would that surviving value be, sir?

THE COURT: When you speak of surviving value, it is of the 131 coils, is that right?

MR. GOODENOUGH: Yes, sir.

THE COURT: He just said it was a total loss.

MR. GOODENOUGH: Yes, but he also said it did have a value, your Honor. It had a salvage value.

THE COURT: I don't understand how a total loss can have a value.

MR. GOODENOUGH: That is what I want to have the witness explain.

THE WITNESS: It had a salvage value at so much per pound on the scrap market.

Q But what would have to be done before it could be used for scrap?

A Judging from the weight involved and the type of coils, you would have to have at least four or five men involved in handling the coils, to unravel, to try and bend the coils so they could be handled by equipment. Because of the weight involved they couldn't hand-lift or hand-carry the coil. In addition to the appearance

jks

of the coils and wire strewn over an area of approximately 1200 square feet in this one bay of the warehouse, it would necessitate coming in with an acetylene torch to cut up the strewn wire and remove it from the stack which was a tangled mess.

So the labor involved, in trying to extract the spaghetti bales of wire, to salvage that which appeared not to have too drastic a cosmetic natural damage, it would be prohibitive. The cost involved would undoubtedly exceed the value.

THE COURT: So he is back to total loss.
So it had no salvage value.

MR. GOODENOUGH: Yes, sir.

Q Mr. Juric, have you made many similar surveys to the one here in suit?

A Yes.

Q With regard to the shed, is this shed where the cargo was stored near the vessel slip?

A This particular butler type warehouse building -- this is metal-clad, quarter-sloped building; entranceways at four sides of the building -- is on the surface of the ground, cement slab, is even with the slip where the ship comes into the dock, and approximately 150 to 200 feet from the dock side.

1 jks

2 Q Does cargo normally move directly from the ship
3 into this shed?

4 A Not normally. It is removed from the vessel,
5 placed on skids or depends on the commodity that's coming
6 off of the vessel. It is placed on skids, in some
7 cases, and in some cases it is removed by a crane or a
8 hoist and placed into a conveyance, and then removed to
9 the warehouse or placed on a hi-lift or a vehicle of some
10 sort and placed in the open, out on the premises.

11 Q So then cargo such as our cargo here would
12 move from the vessel onto a conveyance of some type, and
13 if it is brought into the shed, it would be brought direct-
14 ly into the shed?

15 A Normally that is the way it would be handled.

16 Q Mr. Juric, do you have an opinion as to the
17 cause of the damage?

18 A Only an opinion. If I may refer to my report.
19 It is my opinion that the handling of the
20 property, when loaded on the vessel or removed from the
21 hull of the vessel, was in such manner that it could not
22 be placed on skids on the dock side or placed in a convey-
23 ance to be moved into a warehouse and stacked properly.

24 Q When you referred to rough handling, Mr. Juric,
25 what do you mean?

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THE COURT: He didn't use the word "rough" handling. You did.

A The equipment --

THE COURT: Wait a second. You haven't said there was rough handling here. All he made was a generalized statement, handling of the cargo in loading or unloading prevented it from being placed on skids.

Q Mr. Juric, when you used the term "handling," handling being of such a nature as to prevent the cargo from being loaded onto skids at pier side, what do you mean?

A Apparently the hoist or the crane that may have been used in this instance picked up the coils carelessly or improperly to be certain that it had the hook or the cable or the chain through the loop of the coil; or if the coils were on skids, then the equipment used wasn't firmly placed under the skid so that the skid could carry the coils, and there would be no abuse to the coils that are placed on the skid.

It appeared that the conveyance being used grabbed the coils and placed them on some means of conveyance, to be placed in the warehouse, because I could not see that the damage or the extent of physical damage to the coils would have occurred while in the warehouse.

jks

The area within the warehouse is affixed to other commodities of an entirely different nature, whereby the bay was in such section that they coils would not be mishandled or abused in any way.

Q Mr. Juric, in your survey, Plaintiff's Exhibit 5 in evidence, you used the term "rough handling" when you express your opinion as to the cause of damage.

Would you explain your use of the term "rough handling" in this instance?

A Rough handling, as I would consider it, would be the negligent act on the part of the operator of the equipment handling the commodity, such as not placing it in a firm or a position so that it could be handled in the normal fashion at the dock side.

It appeared from the examination that I had made of the banding around the coils that the bands were split, not twisted, which would make me believe that the coils were dropped in a vertical fashion, and if that is done the bands will split. If the coil is handled in a perpendicular fashion, and even dropped, it would not split the bands, so this would appear to me that a roughshod handling operation took place.

Q In loading or off loading the vessel?

A I wouldn't be aware of whether it was in the

1 jks

2 slip of the vessel -- I mean on the vessel or in the
3 slip or carrying it from the dock side to the warehouse.

4 MR. GOODENOUGH: No further questions, your
5 Honor.

6 THE COURT: Mr. Greenbaum.

7 MR. GREENBAUM: Your Honor, at this time I
8 will move to strike all of Mr. Juric's testimony as far
9 as his personal observations of the cargo and his surmises
10 as to the handling of the cargo, for failure to connect
11 the condition of the cargo at the time of discharge with
12 the condition at the time he observed it.

13 THE COURT: Overruled.

14 CROSS EXAMINATION

15 BY MR. GREENBAUM:

16 Q Mr. Juric, this report bears a date in the
17 upper right-hand corner, January 25, 1968. Is that the
18 date that you prepared the report?

19 A No. I prepared the report, the specimen
20 report from my work notes.

21 Q When did you prepare a specimen report?

22 A I do not have the specimen report.

23 Q Do you recall when you prepared it?

24 A The work notes --

25 THE COURT: Let me get this straight. What

XX

1 jks

2 does the date mean?

3 Q What is the significance of that date, January
4 25, '68?

5 A The date up in the top right-hand corner is the
6 date that the report I have here was typed up.

7 THE COURT: So you did nothing from June of
8 '67 to January of '68?

9 THE WITNESS: Yes, sir.

10 Q Do you have your work notes here with you?

11 A No, I do not.

12 Q Are they still in Chicago?

13 A No.

14 Q Did you destroy them?

15 A Yes.

16 Q When was that, sir?

17 A I have no idea.

18 Q Do you recall how extensive these notes were,
19 how many pages were they?

20 A They would be similar to what I have here,
21 other than I would have drawings possibly and diagram of
22 the square foot area of the warehouse and the general
23 notes as to the cosmetic appearance of the wire, such as
24 rusted, blemishes, bent, approximate weight, the commodity
25 that was adjacent to this particular bay, the surroundings

1 jks

2 of the warehouse.

3 Q Sir, you mentioned rust. Is bright basic
4 wire more susceptible to rust than wire rods?

5 A It's the normal type of warehouse for this
6 particular commodity.

7 THE COURT: That isn't the question. Listen
8 to the question.

9 (Question read.)

10 A No.

11 Q Sir, is it not a fact that wire rods may be
12 stored outdoors whereas bright basic wire is invariably,
13 if correctly stored, stored indoors?

14 A Will you repeat that question, please?

15 THE COURT: Better keep your voice up.

16 Q Is it more proper -- is it proper to store wire,
17 bright basic wire outdoors?

18 A No.

19 Q It must be stored indoors?

20 A It's normally stored indoors.

21 Q May wire rods be stored outdoors?

22 A Yes.

23 Q Why the difference between the two commodities?

24 A Wire rods normally are a raw iron or rough iron
25 which are apparently used for a purpose other than coiled

1 jks

2 wire. The coiled wire can be used for nuts and bolts
3 and such which rust is not acceptable, where the steel
4 rods, stored out, regardless of whether they have rust or
5 blemishes such on them, can be used for reinforcing in
6 concrete or other purposes, for use where there isn't any
7 cosmetic appearance that becomes necessary.

8 Q I see. And do I understand that one may not
9 be more susceptible to rust than the other, but that rust
10 will do more economic damage to bright basic wire than it
11 will to wire rods?

12 A Yes.

13 THE COURT: Let me understand this. You draw
14 a distinction between rods and wire. Is that because rods
15 cannot be coiled?

16 THE WITNESS: Normally they are not. They are
17 in 10-foot or 12-foot or 20-foot lengths. They are
18 banded, but they can --

19 THE COURT: How thick is the wire we are deal-
20 ing with here?

21 THE WITNESS: We are dealing with coiled wire.

22 THE COURT: What is the diameter?

23 THE WITNESS: The diameter is double O gauge
24 or O gauge. In inches I did not measure it.

25 THE COURT: I don't know what O gauge means.

1 jks

2 MR. GREENBAUM: Your Honor, the diameter
3 appears on the invoice.

4 THE COURT: What is it?

5 MR. GREENBAUM: Well, for double O gauge it is
6 8 millimeters 40 and for O gauge it is 7 millimeters 78.

7 MR REPETTO: It also appears on the bill of
8 lading.

9 MR. GREENBAUM: The figures on the bill of
10 lading agree.

11 Q Sir, is that a lesser diameter than the
12 diameter of wire rods, in each of these cases?

13 A I did not -- I do not know.

14 Q Sir, is there a difference in the value between
15 wire rods and bright basic wire?

16 A I do not know.

17 Q Is there a difference in the manner of handling
18 required for each?

19 A Not necessarily.

20 Q Is there a difference in the manner of handling
21 required for bundles as opposed to coils?

22 A Yes.

23 Q Which would you say is more susceptible to
24 damage, coils or bundles?

25 THE COURT: When you say bundles, you mean wire

1 jks

2 rods?

3 MR. GREENBAUM: Bundles of iron rods, yes, sir.

4 A Coils would be.

5 Q Sir, are you familiar with the market condi-
6 tion for steel in May of 1 967?

7 A No, sir.

8 Q Your report indicates that the estimate of
9 damage is based on invoice price, is that correct?

10 A Yes, sir.

11 Q But you have no idea of the market value, is
12 that correct?

13 A That's right, sir.

14 Q In your experience have you assessed damages
15 of any commodity based on market value?

16 A Yes.

17 Q Are you aware that market value does not always
18 coincide with invoice value?

19 A Yes, sir.

20 Q You are aware of that.

21 Sir, in your report you describe the damage as
22 "Bent wire, dirty, unbanded, coils tangled."

23 Was there any breaking of wire?

24 A Actual fracture or breaking, I could not -- I
25 did not find.

1 jks

2 Q Was there a substantial amount of crimping?

3 A Substantial amount of?

4 Q Crimping.

5 A Yes.

6 Q Substantial amount of crimping?

7 A Yes.

8 Q How would you define crimping, sir?

9 A Will you speak up a little?

10 Q How would you define crimping?

11 A Bent or squeezed together.

12 Q You didn't mention crimping in your survey
13 report, did you?

14 A No, I did not.

15 Q Crimping is not the same as bending, is it?

16 A Crimping is not the same as bending.

17 Q Sir, if I were to give you a magnifying glass
18 would you be able to point out instances of crimping in the
19 photographs attached to your report?

20 A No, I don't think I could.

21 Q You mentioned that this cargo might have had
22 some inherent scrap value aside from the question of the
23 labor necessary to transport the cargo.

24 Do you know what the value would be per pound,
25 scrap value, I mean?

1 jks

2 A Not for that particular commodity that is
3 involved, but there are advertised prices as to the scrap
4 value of steel --

5 Q Was this No. 1 --

6 A -- listed or posted in the Chicago area.

7 Q Is this considered No. 1 scrap, the cargo in
8 question?

9 A I did not make a determination as to classifica-
10 tion of scrap.

11 Q Sir, would scrap value of \$41 a ton be excessive
12 for this cargo, in your opinion?

13 A I wouldn't know.

14 Q You mentioned, sir, that the cost of preparing
15 the cargo for transportation out of the warehouse would be
16 excessive.

17 Do you have any idea what dollar amount that
18 would be?

19 A At this point I don't have a dollar amount
20 other than by experience, considering the amount of people
21 that would be involved for the handling and the equipment
22 that would be necessary to organize or to untangle the
23 mess and such, would certainly take a good number of days.

24 Q Sir, do you think the cost would exceed \$5000?

25 A I believe it would in this instance.

1 jks

2 Q Sir, could the cargo be reconditioned at a cost
3 of \$5000 to put it in its original condition?

4 A No.

5 Q Sir, what would your reaction be if I told you
6 that this cargo was, in fact, reconditioned at a cost of
7 \$1984 and was restored to its original condition?

8 A I would be amazed.

9 Q Sir, you mentioned that the coils in this case
10 were so strewn about and the bales were opened to the
11 point that you could not -- the term you used was that the
12 cargo could not be recognized as to weight per bale.

13 THE COURT: When you say "bale", do you also
14 mean coil?

15 Q What did you mean by bale, sir, the word "bale",
16 when you said weight per bale?

17 A Weight per bale was the coil.

18 THE COURT: Each coil being a bale?

19 THE WITNESS: In our terminology I referred
20 to a banded coil as a bale also.

21 THE COURT: All right.

22 Q Sir, you were very specific in the number of
23 coils and the amount of weight which constituted damaged
24 cargo. How were you able to determine the number of
25 coils and the amount of weight of this unrecognizable

1 jks

2 mess?

3 A We counted the number of red and yellow tags
4 that we found in that particular area where the coils were
5 stored.

6 Q Sir, do you recall what sort of binding was
7 used on this cargo?

8 A No.

9 Q Would it refresh your recollection if I told
10 you that the cargo was bound in sets of coils, bundles of
11 coils, and that those bundles were bound by soft steel
12 wire?

13 A I wouldn't know that. I didn't observe
14 that.

15 Q Sif, if that were the case, would you consider
16 that a proper method of binding the coils?

17 A Binding the individuals coils or the stack of
18 coils?

19 Q The stack of coils.

20 A If the binding was of heavy gauged wire or good
21 steel wire, it would probably be sufficient to keep the
22 coils in the proper position when handling.

23 Q I am referring to soft steel wire. Can you
24 make a judgment, sir? If not, just tell me you can't.

25 A If you are talking about soft wire and with the

1 jks

2 weight of the coils, I would say it would not be adequate
3 to handle the coils.

4 Q Sir, do you recall the diameter of the bands
5 used to bind the individual coils?

6 THE COURT: I gather from your question that
7 there were individual coils that were then banded together
8 in stacks?

9 MR. GREENBAUM: That is my understanding, your
10 Honor, yes. I will have a witness to testify to that.

11 THE COURT: Okay.

12 A I can't recall the width of the bands that had
13 the coils banded.

14 Q Sir, with respect to the damaged coils, were
15 the bands all broken or were the bands simply -- did the
16 bands simply slip down off the coils in some cases so that
17 they met at one juncture?

18 A Well, we had some bands that were split. There
19 were loose bands strewn on the floor where the coils were
20 unbanded. We had some bands that came together; as a
21 result the coil came apart as a spring.

22 Q Is that called fanning?

23 A Right. And then there were some coils that
24 still had the bands on, but the wire itself, because of
25 the way the three bands or two bands were placed on the

1 jks

2 coil, had shifted around and the coil became loose, but
3 was still intact.

4 Q What would cause bands to slip down like that
5 the way you described?

6 A I don't know.

7 Q If the cargo were subjected to rough handling,
8 as you stated, that would cause the bands to break, is
9 that right?

10 A That's right.

11 Q Would it cause the bands to slip down?

12 A They could also slip, I believe. I didn't
13 witness, in this instance, how they slipped.

14 Q Well, you witnessed the fact that they did
15 slip.

16 A They were moved around from their normal posi-
17 tion on the coils at the time of my inspection.

18 Q Sir, is it proper to discharge wire coils using
19 rope slings?

20 A I can't recall whether they use ropes or not.

21 Q Is it proper to do so?

22 A I don't know.

23 Q Weol, sir, you testified that the handling in
24 this case was rough handling, and you also stated in your
25 report, on the second page, that equipment used to handle

jks

coils improperly operated, but you are not certain if rope slings are a proper method of discharging coils; is that right?

A I am not aware that rope slings are used or were used in this particular instance.

Q Sir, that is not what I asked. I asked if it is a proper method. Assuming it were used, is it a proper method?

A I don't know.

Q What is the extent of your experience, sir, with coils of steel wire, surveying such coils or otherwise dealing with such coils?

A I have made similar surveys for this type of wire on numerous occasions at the same location.

Q Was that in 1967 and before 1967?

A Yes.

Q Sir, you mentioned that bands on some of the coils were split. Were they split longitudinally around or were they broken?

A Broken.

Q Broken apart.

You mentioned also that you counted the red and yellow tags. Were you able to move the various coils in order to get to the tags and count them?

A We did shove some of these around to try and count the tags as we saw them. Actual lifting of the coils we did not.

Q Well, sir, these are tons of steel, are they not, and you say they were strewn about. How was it possible to determine the number of damaged --

A I did the best that I possibly could under the circumstances.

MR. GREENBAUM: I have no further questions,
your Honor.

THE COURT: Any redirect?

REDIRECT EXAMINATION

BY MR. GOODENOUGH:

Q Just one question, Mr. Juric.

Does your survey report, Plaintiff's Exhibit 5, accurately reflect the damage that you saw on your inspection at the warehouse?

MR. GREENBAUM: Objection, your Honor. This is opinion evidence.

THE COURT: Sustained. It is in evidence.

MR. GOODENOUGH: We have no further questions,
your Honor.

(Witness excused.)

THE COURT: Next witness.

1 jks

2 MR. GOODENOUGH: Joan Walker, please.

3 - -

4 J O A N C. W A L K E R , called as a witness by
5 the plaintiff, having been first duly sworn, testified
6 as follows:

7 DIRECT EXAMINATION

8 BY MR. REPETTO:

9 Q Miss Walker, by whom are you employed?

10 A Nedlloyd, Inc.

11 Q Was Nedlloyd, Inc. an agent for Salvesen Line at
12 one time?

13 A A general agent, yes.

14 Q In May of 1967?

15 A That's true.

16 Q Are they agents --

17 THE COURT: Who are you employed by?

18 THE WITNESS: Nedlloyd, Incorporated.

19 N-e-d-l-l-o-y-d.

20 THE COURT: And the agents for whom?

21 THE WITNESS: Salvesen.

22 THE COURT: Line?

23 THE WITNESS: That's right.

24 THE COURT: In 1967?

25 THE WITNESS: That's true.

jks

THE COURT: Go ahead.

Q Miss Walker, you are testifying pursuant to a subpoena duces tecum that was served on you by plaintiff's counsel yesterday, I believe, is that right?

A That's right.

Q I show you Plaintiff's Exhibit 2 and ask if you recognize it.

A Yes. It is the bill of lading.

Q And that is the Salvesen Line bill of lading?

A That's true.

Q For whom Nedlloyd acted as an agent?

A Right.

Q Are you familiar with Salvesen Line's operation in Chicago in '67?

A Yes.

Q Do you know who their stevedores were at that time?

A Transoceanic.

Q And who was their terminal operator?

A It would be Transoceanic.

Q Have you seen the survey report that was Plaintiff's Exhibit 5 prior to coming here?

A Yes.

Q And it describes a Transoceanic shed. Is that

1 jks
2 at the same terminal where Salvesen Line discharged in
3 May of 1967?

4 A I have not been in Chicago. I am not aware
5 of the physical layout.

6 Q But Transoceanic is Salvesen Line's stevedore
7 and terminal operator at Chicago, or was at that time?

8 A That's correct.

9 Q And were hired and paid by Salvesen to discharge
10 the ships?

11 A That's true.

12 Q Did Salvesen Line at that time send out arrival
13 notices when ships arrived to consignees?

14 A Yes.

15 Q Do you have any of the arrival notices that
16 were sent out on the Irish Larch?

17 A No, I do not.

18 Q Do you have any records relating --

19 THE COURT: In other words, your testimony is
20 that it was the custom of Salvesen Line to send out arrival
21 notices?

22 THE WITNESS: Yes, that's true.

23 MR. REPETTO: If we had one it would show the
24 pier.

25 THE COURT: Wait a second. You don't have

any?

MR. REPETTO: We don't have any.

Q Do you have any records relating to the discharge of the Irish Larch in Chicago, in May, June of '67?

A I have a vessel survey report.

Q Is this a so-called hatch survey?

A This is a hatch survey.

Q This was performed at Chicago?

A Yes, it was.

Q Could I see it, please?

A You may.

(Produced.)

Q Are you familiar with the practice of Salvesen Line in having had surveys made out there?

A Yes.

Q These surveys are made before the vessel discharges?

A Yes, and during discharge.

THE COURT: For the record, will you describe what a hatch survey is?

THE WITNESS: The surveyor will board the vessel and look into each hatch, go down into hatch and make notes as to what he sees. He will observe during discharge and report on what he sees during discharge and after discharge

1 jks

2 on the dock.

9 3 Q Does this survey report you handed me refer to
4 any of the cargo in this suit?

5 A Yes, it does. Under bill of lading 6, Antwerp,
6 it mentions CoSid; it says, "See photo from deep tank,"
7 which I have here, "bb", which I understand would mean
8 bent, "on many bundles, and more twisting and loose during
9 discharge and fork lift handling on pier, rope slings
10 used for discharge. Estimate 8 per cent more or less
11 loose and with strands twisted."

12 THE COURT: Are you offering this in evidence?

13 MR. REPETTO: I am about to offer it now.

14 THE COURT: Show it to Mr. Greenbaum.

15 MR. GREENBAUM: No objection, your Honor.

16 (Plaintiff's Exhibit 6 was received in
17 evidence.)

xx 18 Q Now, the survey report, Exhibit 6, under bill
19 of lading 6, says:

20 "See photo from DT," and you have handed me a
21 photo. Is that the one, as far as you know?

22 A As far as I know, yes, this is the one.

23 THE COURT: Is that coming in under Exhibit 6?

24 MR. REPETTO: I am not going to offer it, your
25 Honor. It is not very clear. I am satisfied with the

1 jks

2 survey report.

3 I have no further questions.

4 THE COURT: Will somebody explain to me the
5 relationship of Salvesen to Irish Shipping?

6 MR. GREENBAUM: Your Honor, if I may, I intend
7 to develop that.

8 THE COURT: Okay, I will wait until you develop
9 it, then.

10 CROSS EXAMINATION

11 BY MR. GREENBAUM:

12 Q Miss Walker, are you present today by reason of
13 a subpoena served upon you by the plaintiff's attorneys?

14 A Yes.

15 Q Is there any agency or any other relationship
16 between Nedlloyd or Salvesen and Irish Shipping Company?

17 A No. Nedlloyd acted as agent for Salvesen,
18 but not for Irish Shipping.

19 Q Was there any such relationship in May or June
20 of 1967?

21 A Between?

22 Q Between either Nedlloyd or Salvesen and Irish
23 Shipping?

24 A No.

25 THE COURT: Tell me who they are then.

2 MR. GREENBAUM: I will, your Honor.

3 THE COURT: Let's get to it because I am anxious
4 to know.

5 Q Was the vessel, Irish Larch, owned by Irish
6 Shipping Company and chartered to Salvesen Lines?

7 A It was under charter to Salvesen.

8 THE COURT: Thank you.

9 Q Was this a time charter, Miss Walker?

10 A Yes.

11 Q What was the nature of the compensation to the
12 shipowner?

13 A I believe it was on a month-to-month basis.

14 Q A fixed rate of charter hire?

15 A Fixed rate.

16 Q Was the compensation to the shipowner related
17 to the nature of the cargo carried?

18 A No.

19 Q Miss Walker, did you ever receive a notice of
20 claim after discharging in May or June 1967?

21 A Yes, I did.

22 Q Do you have a copy of that?

23 A Yes.

24 (Produced.)

25 MR. GREENBAUM: Your Honor, before I identify

1 jks

2 and offer this, I would like to just, for the sake of
3 logical sequence, offer into evidence the photograph that
4 was annexed as the exhibit to the survey report.

5 THE COURT: All right.

6 MR. GREENBAUM: The hatch survey.

7 THE COURT: Go ahead.

8 MR. GREENBAUM: Shall we mark this as Defend-
9 ants' A.

10 (Defendants' Exhibit A was marked for
11 identification.)

12 THE COURT: Any objection?

13 MR. REPETTO: No, your Honor.

14 (Defendants' Exhibit A was received in
15 evidence.)

16 Q Now I refer back to the notice of claim.

17 Would you tell me whose letterhead that is?

18 A This is CoSid, Incorporated.

19 Q And the date?

20 A June 8, 1967.

21 Q And to whom is it addressed?

22 A Phelps Agency, Inc., in Chicago.

23 Q Will you tell me who Phelps Agency, Inc., is?

24 A They were our agents in Chicago.

25 Q Whose agents?

1 jks

2 A Salvesen's agents.

3 Q Were they directly agents of Salvesen or sub-
4 agents?

5 A They were actually subagents of Nedlloyd.

6 Q Did they act as agents for the shipowner?

7 A No.

8 MR. GREENBAUM: I would like to mark this for
9 identification.

10 THE COURT: Offer it in evidence?

11 MR. GREENBAUM: Yes, sir.

12 THE COURT: Any objection?

13 MR. REPETTO: No, your Honor.

14 (Defendants' Exhibit B was received in
15 evidence.)

xx 16 Q Miss Walker, was it the practice of Phelps Agency
17 to pass along notices of claims to Nedlloyd?

18 A Yes, it was.

19 Q And was this notice of claim marked as Defend-
20 ntes' Exhibit B passed along?

21 A Yes, it was.

22 Q Was it also the practice of Phelps Agency to
23 pass along invitations to damage surveys?

24 A Most definitely.

25 Q Did Nedlloyd receive any invitation to such a

1 jks

2 damage survey in this case?

3 A No, they did not.

4 Q Miss Walker, after you received the notice of
5 claim, marked as Defendants' Exhibit B, did you advise
6 the shipowner of the claim?

7 A No.

8 Q Did you ever advise the shipowner of the claim?

9 A No.

10 Q Miss Walker, do you recall on what date the Irish
11 Larch departed from Chicago?

12 A June 2, 1967.

13 Q What date; what is the date of the notice of
14 claim?

15 A June 8th.

16 Q Had you received any earlier notice of claim?

17 A No.

18 Q Miss Walker, do you know the freight rates
19 generally charged by your clients, Salvesen Lines, for
20 bundles of wire rods and for coils of bright basic wire?

21 THE COURT: In 1967?

22 Q In 1967?

23 A I know there is a difference.

24 Q Will you tell us what the difference is?

25 A The rods, I believe, are about \$15 a ton, where-

as the bright basic wire is about \$35 to \$40 a ton.

Q Do you know which rate was charged in this case? Was it the rate for bundles of wire rods or was it the rate for coils of bright basic wire?

A It was the rods.

Q The lower rate?

A The lower rate.

Q Did you have any correspondence with Trans-oceanic Terminals in connection with this matter?

A It's possible. I did receive from Trans-oceanic Terminal a notice of private sale which was sent to our agents, International Great Lakes Shipping, that these 283 coils of wire rod were going to be sold at private sale. They were in storage.

Q Did you advise the plaintiff or the plaintiff's attorney, Mr. Cannata, of this impending sale?

A Yes, I did.

Q Who did you advise?

A I advised Mr. Cannata.

Q What was Mr. Cannata's response?

A Mr. Cannata said he was going to get in touch with his client because it was his own personal opinion that the wire rods did have some value and he was going to see what they would do about it.

1 jks

2 Q And did he return to you after contacting his
3 client?

4 A I don't believe so, although we had discussed
5 it many, many times.

6 Q Did he take any action whatever concerning this
7 notice of sale?

8 A Not to my knowledge.

9 Q Miss Walker, what was the title, your title at
10 Nedlloyd in May 1967?

11 A Claims agent.

12 Q As a claims agent, did you have experience with
13 other claims concerning steel wire or steel products in
14 May, June, 1967?

15 A Yes, I did.

16 Q Would you describe such experiences, please?

17 A There were many experiences. At that partic-
18 ular time the market was dropping for steel products, and
19 many, many claims were submitted because people just said,
20 well, the market has dropped; we are just not going to
21 pick up our cargo.

22 Q That is to say --

23 THE COURT: The market for wire or rods or
24 both?

25 THE WITNESS: The general commodity, both.

1 jks

2 Q Do you mean --

3 A The steel products.

4 Q Steel products. And do I understand that
5 consignees were abandoning cargoes?

6 A Yes, they were.

7 Q Did you authorize or settle any of these claims?
8 Did you pay anything out?

9 A No, I did not pay any claims.

10 Q Have any of these been tried, arbitrated, to
11 your knowledge?

12 A No, they have all been closed with no payment
13 by the ocean carrier.

14 MR. GREENBAUM: I have no further questions.

15 REDIRECT EXAMINATION

16 BY MR. REPETTO:

17 Q Miss Walker, you testified that the Irish Larch
18 was on a time charter for Salvesen Lines.

19 A Yes.

20 Q Do you know what form of charter that was; was
21 it a produce exchange or --

22 A I think it was a produce exchange.

23 Q Under that charter was it required of the master
24 to sign bills of lading, the normal produce exchange?

25 A It was normal, yes.

XX

jks

Q And the Salvesen Line form of bill of lading used is signed as agents for the master, is that right?

A Yes.

Q Do you have the original surrendered bills of lading covering this?

A No, I do not.

Q They would have been surrendered in Chicago?

A In Chicago.

Q You mentioned that you had experiences with consignees abandoning cargoes. Were they abandoning sound cargoes or damaged cargoes?

A Sound cargoes as well as alleged damaged cargoes.

Q And there were damaged cargoes also abandoned?

A Yes.

MR. REPETTO: I have no further questions.

THE COURT: All right.

RE CROSS EXAMINATION

BY MR. GREENMAN:

Q Miss Walker, under the New York Produce Exchange charter at issue are you familiar as between who, owners and charterers, who is responsible for loading and stowing cargo?

A I am not familiar unless I looked at it, and

1 jks

2 I don't have it.

3 MR. GREENBAUM: Nothing else.

4 THE COURT: Thank you, Miss Walker. You may
5 step down.

6 (Witness excused.)

7 THE COURT: Next witness.

8 MR. GOODNEOUGH: Plaintiff rests, your Honor.

9 MR. GREENBAUM: Your Honor, at this time I
10 move to dismiss the plaintiff's case, first of all because
11 the plaintiff did not own the cargo and has no interest
12 to produce in this case and, secondly, because the plain-
13 tiff has failed to establish any damages.

14 THE COURT: Decision reserved.

15 Call your witness.

16 MR. GREENBAUM: Mr. Lindstrom.

17 - -

18 M A R K C. L I N D S T R O M , called as a witness
19 by the defendants, having been first duly sworn,
20 testified as follows:

21 DIRECT EXAMINATION

22 BY MR. GREENBAUM:

23 Q Mr. Lindstrom, by whom were you employed in
24 1967?

25 A As of the 1st of August, by Transoceanic

1 jks

2 Terminal Corporation.

3 Q What was your title?

4 A Claims manager and safety director.

5 Q Would you tell me something of your employment
6 prior to August 1st, 1967?

7 A I was for four years owner's representative
8 for the Swedish-Chicago Line out of Stockholm, Sweden,
9 resident in Chicago.

10 THE COURT: What was your title?

11 THE WITNESS: Owner's representative.

12 Q And have you had other experience in the ship-
13 ping industry?

14 A Prior to that I was for seven and a half years
15 manager, agency department, Canadian Overseas Shipping,
16 Limited, Montreal, Canada.

17 Q Did you have any other employment in the ship-
18 ping industry?

19 A In 1946 I was booking clerk for the Finnish
20 Paper Mills Association, Hensinki, Finland.

21 Q Sir, in your employment prior to August 1st,
22 1967, did you have any experience or dealings with steel
23 cargoes and particularly cargoes of steel wire in coils?

24 A I did.

25 Q Would you explain to some extent what experi-

1 jks

2 ence you did have?

3 A In the capacity of owner's representative
4 for the Swedish-Chicago Line, I was connected with dis-
5 charging of cargoes carried on the Swedish-Chicago Line
6 into the Great Lakes area and to Canadian ports and con-
7 siderable shipments of wire at that time was carried by
8 the Swedish-Chicago Line into these ports that were under
9 my jurisdiction.

10 Q Sir, in that connection, did you have occasion
11 to assess the degree of physical damage and/or the degree
12 of economic damage to such cargoes of steel?

13 A I did.

11 14 Q Sir, as claims manager for Transoceanic, did
15 you become involved in a dispute with CoSid, Inc. concern-
16 ing the shipment of wire coils discharged in Chicago off
17 the Irish Larch in May 1967?

18 A I did.

19 Q Did you have conversations with any reprent-
20 ative of Co-Sid concerning this cargo?

21 A I did have discussion with a representative of
22 CoSid. I cannot recall his name. He did come down to
23 the terminal to look the cargo over that was In the shed,
24 transit shed at the time, and which the terminal tried
25 to get removed, since it was taking up valuable covered

1 jks

2 space in the transit shed.

3 Q What discussions did you have with the repre-
4 sentative of CoSid?

5 A Basically it was a discussion about whether or
6 not this cargo could be put back in such a shape that the
7 trucker would accept it for carriage, and as I recall it,
8 no final decision or commitment was given by the represent-
9 ative from CoSid.

10 Q Did Transoceanic ultimately recondition the
11 cargo?

12 A Yes. To the extent that it could be moved
13 from the transit shed, since the space in the shed was
14 very badly needed for other cargoes.

15 Q In your opinion, sir, and based upon your other
16 experience with this sort of cargo, to what extent did
17 reconditioning restore the cargo to sound market condi-
18 tion?

19 A I wouldn't know about sound market condition
20 since I have not sold steel, but I would say this --

21 Q May I explain the question? I am referring
22 to physical condition of the cargo and not the value.

23 A In my estimate the material had a maximum,
24 absolute maximum damage to it of 5 per cent. Now, when
25 I say this, I compare it to similar cargoes which I have

1 jks

2 handled as claims manager with Transoceanic Terminal.

3 Q Have you had other occasion to recoupe cargo
4 of steel coils?

5 A Yes.

6 Q And --

7 THE COURT: Wait. When you say that the
8 damage is 5 per cent, you mean the damage which would be
9 completed by reconditioning?

10 THE WITNESS: No. I mean physical damage to
11 the material, your Honor.

12 THE COURT: Bending and rusting?

13 A Mainly bending.

14 Q Was this 5 per cent damage the damage that
15 remained after reconditioning?

16 A That is my estimate.

17 Q Did you personally view this cargo in the shed
18 at the terminal?

19 A Yes, I did.

20 Q Did you view it before August 1st?

21 A I was working a ship, the Swedish-Chicago Line,
22 down at the pier, but I only saw it without studying, so
23 I couldn't say.

24 Q Did you study it? Did you review it after
25 August 1st?

1 jks

2 A Afterwards.

3 Q Did you notice the nature of the bands which
4 held the individual coils?

5 A The individual coils, as I recall it, were banded
6 with narrow steel bands, I would say maximum of half an
7 inch width, and the individual coils were bundled together
8 with baling wire, as it is called.

9 Q In your opinion did the banding on the individ-
10 ual coils conform with the ordinary practice in the industry
11 of banding such coils? You refer to it as narrow. Was
12 it insufficiently narrow?

13 A I would say it was insufficient, and comparing
14 to other cargoes, similar cargoes, three-quarter to one-
15 inch wide banding is normally used. This was consider-
16 ably less.

17 Q What about the baling wire which bound the
18 bundles of coils? Did you form an opinion concerning the
19 sufficiency of that baling wire for the purpose?

20 A In my opinion, the way it had been applied,
21 allowed it to come under extreme pull, so to speak, in
22 lifting the coils, and that would tend to stretch the
23 wire.

24 Q Is this sort of wire -- does that conform with
25 the practice in the industry for such packaging?

1 jks

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Lindstrom-direct

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2 A I have seen it extensively used in connection
3 with wire rod, but not with higher valued cargo like
4 bright wire.

5 Q Sir, would you explain briefly the method of
6 discharging such wire coils from a vessel?

7 A I cannot testify to the discharging of this
8 particular ship because I didn't see it, but the normal
9 method is to use rope slings on bright wire and sometimes
10 wire slings on wire rod. But on bright wire it would
11 be a question of using rope slings.

12 Q Sir, is there a difference in the stevedoring
13 rates which are charged for discharging bundles of wire
14 rods as opposed to coils of bright basic wire?

15 A There would be a difference inasmuch as bright
16 wire would be stored in the shed under roof to protect it
17 from rain, et cetera, whereas wire rod would be stored in
18 the open. Hence there would be a difference in price,
19 yes.

20 THE COURT: Difference in price or a difference
21 in time?

22 THE WITNESS: I'm sorry, your Honor.

23 THE COURT: You don't get charged by the nature
24 of the cargo you are discharging, do you, by the longshore-
25 men?

jks

MR. GREENBAUM: I think that is what he is testifying to, your Honor.

THE WITNESS: By the terminal, your Honor, the reason being that the shed space is a premium space, whereas the open yard is rather cheaper for the terminal to run.

THE COURT: That isn't the question. You are talking about the longshoreman, the fellow who carries it out. You don't pay him differently.

MR. GREENBAUM: I'm sorry. I mean the rates charged by the terminal for stevedoring and storage.

THE COURT: You are talking about the terminal operator, not the stevedore.

MR. GREENBAUM: You're right, your Honor.

Q Which rates are higher? Is it higher for coils of bright basic wire or for bundles of wire rods?

A For bright basic wire.

Q Which did you charge in this case?

A I don't know. I did not have to do with the stevedore invoicing.

Q Did you study the file of Transoceanic that Transoceanic maintained in this matter?

A Yes, but the stevedoring charges were in a separate file and I had no reason to study that.

1 jks

2 Q Sir, in your experience with steel cargoes,
3 are you aware of any difference in value between wire rods
4 and bright basic wire?

5 A I don't know dollar-wise, but bright wire is a
6 more reformed type of steel wherefore I can only presume
7 it is considerably more expensive.

8 Q Sir, I recall you testified that you recon-
9 ditioned the cargo or recoopered the cargo. What was
10 the cost of the reconditioning?

11 A Somewhere in the neighborhood of \$2000.
12 I don't remember exactly.

12 13 Q Did you seek to recover this amount from CoSid?

14 A As I recall it, I put all pertinent parties
15 on notice that unless we could recover the money or g et
16 the cargo delivered we would put it up for public sale.

17 To my recollection, CoSid employed a lawyer
18 who wrote Transoceanic Terminal saying that, in effect,
19 they were abandoning the cargo.

20 Q Did CoSid ever pay you for reconditioning the
21 cargo, pay Transoceanic for reconditioning the cargo?

22 A Not to my knowledge.

23 Q Did anybody ever pay Transoceanic?

24 A Not to my knowledge.

25 Q Sir, did you make any efforts to sell the

1 jks

2 cargo?

3 A I did.

4 Q And will you explain what results came of those
5 efforts?

6 A I wasn't able to find any willing buyer and I
7 was told by some salvage firms at the time that the market
8 was wrong for selling this kind of material since there
9 had been speculative buying, and I was in oversupply of
10 the material.

11 MR. GOODENOUGH: Objection, your Honor.

12 Hearsay.

13 THE COURT: I think that ties in with your
14 own witness' statement that they were dumping the stuff
15 because the market went down. He is saying what some-
16 body told him, not what he knew, but I will let it in
17 because your own witness says the market was dropping
18 here and the consignees were leaving the stuff there
19 without picking up even though nothing was wrong with it.

20 Q Sir, are you aware of what factors may have
21 influenced the market at that time?

22 THE COURT: That is unnecessary.

23 Q Did any prospective purchaser or anybody that
24 you approached say that they were not going to purchase
25 the cargo because of any damage to the cargo?

jks

Lindstrom-direct

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A Not to my recollection.

THE COURT: We will adjourn for lunch and return
at quarter to two.

(Luncheon recess.)

- -

AFTERNOON SESSION

(2.00 p.m.)

MARK C. LINDSTROM, resumed.

DIRECT EXAMINATION (Continued)

BY MR. GREENBAUM:

Q Mr. Lindstrom, this morning we were discussing the re Coopering done to the cargo at issue.

Was this re Coopering done under your instructions?

A I would --

MR. GREENBAUM: I will withdraw that. Never mind.

Q Did you have occasion to review the records of your company with respect to the costs of this re Coopering?

A I did.

Q And did you prepare a breakdown of the costs?

A Yes, I did that.

Q And did you send such a breakdown to the General Adjustment Bureau?

A I did.

Q I am showing you a letter dated January 5th, 1968, to the General Adjustment Bureau, signed in your name, and I ask you if this is the letter that was sent, the covering letter with which there was enclosed a break-

1 jks

2 down of stevedoring costs.

3 A Yes. I wrote this letter to General Adjust-
4 ment Bureau on January 5 and I attached an enclosure
5 showing various costs.

6 MR. GREENBAUM: I would like to mark these
7 together as Defendants' Exhibit C.

8 (Defendants' Exhibit C was marked for
9 identification.)

xx 10 Q I refer your attention to the enclosure again
11 and the breakdown of costs.

12 How many coils of wire are referred to on that?

13 A Under storage charge it states 131 coils.

14 Q How many coils are referred to under re Coopering
15 charges?

16 A Specifically there are no coil numbers, but the
17 total number of wire rod concerned is 283.

18 Q And would you tell me if that document indicates
19 the dates of re Coopering?

20 A It does.

21 Q What are the dates?

22 A 6/6 --

23 THE COURT: Are you offering this document?

24 MR. GREENBAUM: Yes. I will offer this into
25 evidence.

jks

Lindstrom-direct

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MR. REPETTO: May I see it?

MR. GREENBAUM: Sure.

MR. REPETTO: No objection.

(Defendants' Exhibit C was received in evidence.)

Q Mr. Lindstrom, the breakdown of recovering costs indicates recovering performed on 6/6, 6/7, 6/8, 6/9 and later then on 6/19, 6/20, 6/21, 6/22.

Do you know, Mr. Lindstrom, if the consignee accepted the cargo which was recovered between June 6th and June 9th?

A To the best of my knowledge, yes.

THE COURT: What is this?

MR. GREENBAUM: I am asking the witness whether the consignee accepted delivery of the cargo which was recovered between June 6th and June 9th. There were two periods of time during which recovering took place, and the first period of time was prior to the plaintiff's cargo survey on June 14th.

THE COURT: You are talking about a letter written to Mr. Juric on January 8th, 1968.

MR. GREENBAUM: With an enclosure.

THE COURT: Yes, and that shows that recovering was done when?

1 jks

2 MR. GREENBAUM: June 6th to June 9th, and
3 then again on June 19th to June 22nd.

4 THE COURT: June 6th to June 9th, and when?

5 MR. GREENBAUM: And then June 19th through June
6 22nd. This is the document, your Honor.

7 THE COURT: And you are claiming that the
8 consignee accepted the --

9 MR. GREENBAUM: The original shipment was 283
10 coils. Of this, the claim only relates to 131 coils.
11 Obviously the difference was accepted.

12 The witness is testifying to the effect that
13 some of the cargo which was accepted was recoopered and
14 accepted as whole after recoopering.

15 MR. REPETTO: I object to that question and
16 answer. He doesn't know. He didn't work for the
17 company until August 1, '67. This letter was written
18 January, a year later.

19 If he has some record to show that the cargo
20 that has been delivered and accepted as sound has also
21 been recoopered, that's fine, but he has no knowledge of
22 that. He wasn't there and there is nothing in this
23 paper to indicate it.

24 Q Mr. Lindstrom, upon what do you base your con-
25 clusion that the consignee accepted some recoopered cargo?

1 jks

2 A Yes, I did.

3 Q Did you observe any substantial amount of
4 crimping in the wires?

5 A I do not recall crimping at all.

6 Q You do not recall observing it or you believe
7 there was no crimping?

8 A I observed the cargo as well as I could, and I
9 could not see crimping. I saw fanning out of coils and
10 I saw some bending of wire, but crimping I did not see.

11 THE COURT: What do you mean by fanning out of
12 coils?

13 THE WITNESS: Your Honor, when a coil is banded,
14 it is usually in four or more places with bands around the
15 pyramid, and if these bands, if a few of them at one side
16 of the coil break or by any reason get moved together at
17 one end of the coil, the balance of the coil will fan out
18 in this fashion (indicating).

19 THE COURT: All right.

20 Q And, Mr. Lindstrom, is that a condition which
21 can be corrected by recoopering?

22 A It is.

23 Q Did Transoceanic use fork lifts in moving cargo
24 on the pier, at the time in question?

25 A Yes, they do.

Q And would you describe the method of using fork lifts for me?

A The method used while I was employed at Trans-oceanic Terminal was for coils of wire, a fork lift with one ram, as it is called in stevedore circles -- it is a round, fairly long rod extending from the front of the lifting part of the fork truck and that one is inserted in the eye of the coil; then the coil is lifted and transported to its place of rest, where the ram is lowered and withdrawn from the eye of the coil.

Q You mentioned that the ram is rounded. Is there a reason for that?

A In order to avoid cuts which a square shape or a flat shape would cause to the wire.

Q Does this fork lift with a single ram differ from ordinary fork lifts used with other cargoes?

A Only in respect of the ram. An ordinary fork lift can fairly easily be transformed into a fork lift with a ram, just by removing the forks and instead putting in the ram.

Q How does the fork differ on the ordinary fork lift? Is it also single pronged?

A No, it is a double prong.

Q Is it rounded?

1 jks
2 A No, it is not. It is two flat forks and the
3 forks themselves are rectangular.

4 Q Mr. Lindstrom, in your reviewing the file
5 possessed by Transoceanic did you discover that that file
6 contained photographs of the cargo at issue?

7 A Yes, I did.

8 Q Let me show you three photographs. I am
9 going to ask you, first of all, if these are the photo-
10 graphs that you removed from the file and, secondly,
11 whether, having seen the cargo, are these photographs of
12 the cargo at issue?

13 A To the best of my knowledge these three pictures
14 are pictures of the cargo at issue and from the writing
15 on the back of them, which I recognize as being that of
16 Mr. Steve Sczerbak, who was the superintendent for the
17 warehouse and for the yard.

18 MR. GREENBAUM: I would like to mark these and
19 offer these into evidence.

20 MR. REPETTO: Do you know who took these
21 photographs?

22 THE WITNESS: My predecessor at the terminal,
23 Mr. Donald Day, Jr.

24 MR. REPETTO: You know he did that?

25 THE WITNESS: Yes. He has told me so.

1 jks

2 MR. REPETTO: Do you know when they were taken?

3 THE WITNESS: The exact date I could not say,
4 but they were in the file when I arrived and started
5 working with the Transoceanic Terminal.

6 MR. REPETTO: I object to them, your Honor.
7 There is no foundation laid that they are this cargo and
8 the comments on the back are hearsay.

9 THE COURT: I don't know what the comments on
10 the back are, but this witness says they correctly reflect
11 the condition of the cargo as he saw it.

12 MR. REPETTO: As to the pictures themselves,
13 then, I withdraw the objection. As to the comments on
14 the back --

15 THE COURT: I will sustain the objection to the
16 comments on the back. I will take them only as depict-
17 ing the cargo as the witness claims he saw it.

18 (Defendants' Exhibit D was received in
19 evidence.)

20 Q Mr. Lindstrom, did Transoceanic Terminal subse-
21 quently receive another cargo of bright basic wire coils
22 shipped by CoSid to the same consignee?

23 A Yes.

24 Q Do you recall when that was?

25 A It was in the fall of the same year. I do not

1 jks
2 exactly recall the month, but on the same ship, the
3 Irish Larch.

4 Q Did you take photographs of that cargo?

5 A I did.

6 Q I am showing you two photographs and I ask you
7 if these are the photographs which you yourself took?

8 A Yes, they are, and on the back of these pictures,
9 on my orders, the same mentioned Mr. Sczerbak made his
10 comments.

11 MR. GREENBAUM: I would like to mark these and
12 offer them into evidence.

13 MR. REPETTO: I object, your Honor, on the
14 grounds they are irrelevant. It is another cargo.

15 THE COURT: What is the purpose you are offering
16 it for?

17 MR. GREENBAUM: Your Honor, the bindings were
18 vastly improved on this second cargo. I think it shows
19 notice on the part of the shipper that the first was
20 insufficient.

21 THE COURT: Objection sustained.

22 Q Mr. Lindstrom, you personally observed the
23 second cargo, is that correct?

24 A I did.

25 Q Did you notice any difference in the bindings

1 jks

2 between --

3 THE COURT: He is making the same objection
4 obviously.

5 MR. REPETTO: Yes.

6 MR. GREENBAUM: I have no further questions.

7 CROSS EXAMINATION

8 BY MR. REPETTO:

9 Q Mr. Lindstrom, you did not see the Irish Larch
10 discharged on May, early June of 1967?

11 A I did not.

12 Q And I take it you did not see the cargo moved
13 from the pier to the shed at that time?

14 A I did not.

15 Q You were talking about fork lifts with rams.
16 Were there other standard fork lifts at that pier at the
17 time, to your knowledge, with regular two-prong forks?

18 A Yes.

19 Q And owned by Transoceanic?

20 A Yes.

21 THE COURT: I gathered you can make the fork
22 lift either a two-pronged fork or a one ram by merely
23 changing the lift.

24 MR. REPETTO: That's true. I don't know what
25 they used, your Honor, that's all.

1 jks

2 THE COURT: On the same hi-lo's.

3 MR. REPETTO: It is the same machine. It is
4 merely the front end prongs that are changed. We have
5 no evidence as to what was used on this cargo is all I
6 am getting at.

7 THE COURT: I understand.

8 Q Now, as I understand your testimony, when you
9 saw the cargo in the shed, there were 131 coils there?

10 A Yes.

11 Q Only. Other coils from the shipment had been
12 delivered?

13 A That is correct.

14 Q And do you know to whom they were delivered?

15 A I don't know that.

16 Q Well, in reviewing Transoceanic's file did you
17 come across delivery receipts?

18 A No. I reviewed only the claims filed and
19 not the freight office file.

20 Q Was there anything in the file to lead you to
21 believe or indicate that the other coils of the shipment
22 were not delivered to McKnight?

23 A When you say the others --

24 Q Well, the whole shipment was 283 coils.

25 A Yes.

1 jks

2 Q And you observed 131.

3 A Right.

4 Q Where did the other 150 some-odd go?

5 A They had been delivered through the offices
6 of the freight office.

7 Q Was there anything in the files to indicate
8 they had not been delivered to McKnight, the ultimate con-
9 signee?

10 A Not that I can recall.

11 THE COURT: You assume these had been delivered
12 to McKnight?

13 THE WITNESS: Yes, your Honor.

14 Q You stated that these coils were recoopered and
15 that recoopering was done some time in June, I take it
16 prior to the time you first saw the coils?

17 A Yes, sir.

18 Q So you saw them in a recoopered state?

19 A Yes, sir.

20 Q What was done to recooper them?

21 A They were rebanded to make them in such shape
22 that they could be removed from the shed where they were
23 at the time.

24 Q Recoiled so they could be lifted with a fork
25 lift?

1 jks

2 A Rebanded, sir, not recoiled.

3 Q Not recoiled?

4 A No.

5 Q Had the bends been taken out of the wire?

6 A There were not that many bends, and what bends
7 there were were not taken out.

8 Q Were not taken out?

9 A No.

10 Q Do you know what the ultimate use of this wire
11 would have been had it been delivered?

12 A No, I don't know.

13 Q How it was to be used?

14 A I don't know.

15 Q Who ordered the rehooking of the cargo?

16 A The general manager of the terminal, Mr. Carl
17 Van Vining.

18 THE COURT: That is Transoceanic's employee?

19 THE WITNESS: Yes, sir.

20 Q He is the manager of the terminal?

21 A That's correct, sir.

22 Q Did CoSid ask to have it rehooked?

23 A No, they did not.

24 MR. REPETTO: I have no further questions.

25 THE COURT: Any redirect?

1 jks

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Lindstrom-redirect

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2 MR. GREENBAUM: One question:

3 REDIRECT EXAMINATION

4 BY MR. GREENBAUM:

5 Q Mr. Lindstrom, is it a standard practice of
6 Transoceanic, and was it a standard practice in 1967 to
7 utilize the single pronged ram fork lift?

8 A During the time --

9 Q For moving steel wire and coils?

10 A During the time I was employed, the four and a
11 half years I was employed there, it was.

12 MR. GREENBAUM: Thank you.

13 THE COURT: You may step down.

14 (Witness excused.)

15 THE COURT: Next witness.

16 - -

25

P E T E R S I E B E L , J R. , called as a witness
by the defendants, having been first duly sworn,
testified as follows:

DIRECT EXAMINATION

BY MR. GREENBAUM:

Q Mr. Siebel, would You please tell us your
occupation?

A I am a marine surveyor.

Q Would you tell us something of your education
and your employment background, please?

A I sailed merchant marine, capacity as high as
second mate and chief engineer. I have a chief engin-
eer's license, second mate's license, and I have completed
almost four years of engineering in Columbia University,
in addition to some metallurgy.

In addition to that, I have served as super-
intendent for maintenance repairs and loading of ships
for various steamship companies, and from 1960 I have been
a marine surveyor, supervising and making surveys, super-
vising loading of vessels, discharging operations and
surveying cargoes, as well as vessels.

Q Sir, have you had experience in surveying
steel products particularly in the year 1967?

A I have.

1 jks

2 Q And does that include steel wire?

3 A It does.

4 Q Does that include steel wire, wire rods in
5 bundles as well as wire coils?

6 A Yes, sir.

7 Q Have you had occasion to assess the physical
8 injury to such cargoes of steel products?

9 A I have been several times requested to make
10 surveys of damaged cargo, damaged caused by the cargo.

11 Q Have you had occasion to assess the extent of
12 economic damage, economic loss to such cargo?

13 A Yes, sir.

14 Q Do you have knowledge of the market conditions
15 for steel products in May, June, 1967?

16 A I do.

15 17 Q Would you please tell us something about that?

18 A In order to be able to evaluate claims and
19 damage to cargo, we had to keep up with the market value
20 and the freight value of various steel commodities.
21 Steel on the whole in May and June 1967 was suffering a
22 drop in market due to the steel strike that didn't come
23 off and the coal strike which was settled. So that
24 the commodity market was dropping by the middle and end
25 of May.

1 jks

2 Q Mr. Siebel, are you aware of any differences
3 between bundles of wire rods and coils of bright basic
4 wire? First of all, is there a difference between the
5 two commodities, wire rods as opposed to bright basic
6 wire?

7 A Wire rods is a term that describes any partic-
8 ular wire rod of any particular steel commodity, and the
9 term "rod", without any prefix, is a longitudinal piece of
10 steel of any diameter from quarter of an inch up to three,
11 four inches, if it is so desired, without bends, where a
12 wire rod coil is a bent piece of material, and basic steel
13 is a definite single commodity in the general kaleidoscope
14 of steel products

15 General wire rod, the word "wire rod" could be
16 any particular commodity of wire, steel wire rod or iron
17 wire rod, whereas basic steel is a single, definite com-
18 modity.

19 THE COURT: That means absolutely nothing to me.

20 Q Is there a difference in value between bundles
21 of wire rods and coils of bright basic wire, to your knowl-
22 edge?

23 A Yes, sir.

24 Q Which would you say is more valuable?

25 A Well, basic wire rod is a definite chemical

1 jks

2 steel commodity and it has a certain value, and an ordin-
3 ary steel wire rod, with no pre-description of it, has
4 a much lower value.

5 Normally wire rods, basic steel rods will run
6 in the neighborhood of \$5.02, \$5.20 per hundred, where
7 basic wire rod -- where standard wire rod or just plain
8 wire rod runs from 4.8, 4.9 cents per pound or \$4.90 per
9 hundred.

10 Q To recap, do I understand bright basic wire is
11 more valuable than simple wire or standard wire rods?

12 A That's right.

13 Q Thank you.

14 Is there a difference, sir, in the stowage
15 factor of bundles of wire rods as opposed to coils of
16 bright basic wire?

17 A A coil of wire, basic wire rod will stow at
18 between 32 and 38 cubic feet per ton, and straight wire
19 rod will stow between 12 and 16, depending on the package,
20 18 cubic feet per ton.

21 Q Mr. Siebel, I am going to show you Plaintiff's
22 Exhibit 5, which is a survey report by Mr. Juric.
23 Additionally, Defendants' Exhibit D, which are three
24 photographs. And I ask you to refer to all of the
25 photographs attached to Exhibit 5 and to the photographs

1 jks
2 which are Exhibit D, and I ask you to study those with a
3 magnifying glass, with particular attention to the bindings
4 on the coils.

5 A Yes, sir.

6 Q I am also going to ask you if you were attentive
7 to the testimony of Mr. Lindstrom concerning the diameter
8 of the bands which bound the individual coils and to the
9 nature of the baling wire which bound the bundles of coils
10 together.

11 Were you attentive to that testimony, sir?

12 A I was.

13 Q Now, considering that testimony and the photo-
14 graphs which you have just studied, can you come to a
15 conclusion concerning the sufficiency of both the bands
16 on the individual wires, wire coils, and the baling wire
17 which bound the coils into bundles?

18 A Attached to the survey of Mr. Juric, the bunles
19 are shown -- the bundles of coils are shown to be bound
20 together with a baling wire type, with very few evidence
21 in all of these of actual strapping. Most of it is shown
22 with baling wire or, as we would call, seizing wire and
23 there is also heavier baling wire showing where the
24 bundles were at one time together.

25 The straps are also shown all in one area,

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2 for this type of material is three-quarters of an inch
3 to an inch or inch and a quarter wire strap, usually the
4 Signode type of wire.

5 Q Judging from the photographs that you are look-
6 ing at now, do you believe that the cargo could have been
7 reconditioned to approximate its sound market condition?

8 A The cargo could have been reconditioned very
9 easily in two different ways.

10 One, it could have been just plainly recoopered
11 by running a wire through, a strap through and restrapping
12 it, or it could have been put on a coiling machine, which
13 is very easy, and very rapid; a method that is wrapped
14 for recoopering these coils, restoring them to their
15 original condition.

16 Q Do you have any estimate of what it might cost
17 to recondition the cargo?

18 A The recoopering of these coils depend on how
19 fast the people worked and so forth, but it would normally,
20 for the number of coils that are stated to be involved
21 here, it would normally take possibly five men for four days
22 working an eight-hour day or twenty man days, 160 man
23 hours, 120 man hours.

24 Q In your opinion, sir, are rope slings a proper
25 method of discharging coils?

1 jks

2 A For basic steel coils, rope slings are the
3 proper method for not damaging the coils.

4 Q And is a single ramrod fork lift also proper
5 for moving coils on the pier?

6 A It is considered the proper and most economical
7 means for stevedores to use. The other way is to use a
8 small crane and still use the same rope sling you use for
9 discharging on to what is known as a high-lifter crane.

10 Q Sir, in your experience, is bright basic wire
11 any more susceptible to rust than standard wire rods?

12 A Yes, sir.

13 Q Why is that?

14 A Becasue of the coating.

15 Q The coating on what, sir?

16 A Pardon?

17 Q Please refer to each particular commodity.

18 A In bright basic wire, the original mill coating
19 has been removed in order to produce what is known as
20 bright basic wire. There is an additional carbonization
21 of the steel or removal of the carbon of the steel which
22 gives it a harder finish whereas in normal wire, the mill
23 scale is left on as a protection against specially pitting
24 and so forth and chemical erosion, to be then treated
25 when they are using it, because almost all of this wire

jks

1 is drawn through die nuts in order to arrive at its final
2 use. Whether it is made into bolts or nuts and so forth,
3 it is still drawn, and in drawing it, with the mill scale
4 and the oxidation on it, they don't have to retemper it
5 because the mill scale and oxidation absorb the heat which
6 is a component factor of the drawing, whereas in basic
7 steel wire you don't have the mill scale left and you
8 have an exposed surface which is very susceptible to
9 oxidation.

10
11 Q Mr. Siebel, are you familiar with the scrap
12 value of this commodity, bright basic steel, at the time
13 in question?

14 A In 1967 the price for No. 1 grade steel in the
15 Great Lakes was \$41 a ton at the dock, prior to loading
16 the vessel, and bright basic wire would be considered
17 No. 1 scrap.

18 Q Sir, after reconditioning the cargo, do you
19 believe it would be worth more than simple scrap?

20 A If it was just recoopered, it would be worth
21 than basic scrap, than plain ordinary scrap.

22 THE COURT: Your other witness said he couldn't
23 sell it.

24 MR. GREENBAUM: He couldn't sell it, sir, because
25 there was no market for the commodity.

1 jks

2 THE COURT: Well, then, it means it wasn't
3 worth anything.

4 THE WITNESS: But there was a scrap value.

5 THE COURT: What is the measure of value?
6 Is somebody willing to buy it? If nobody is willing to
7 buy it, it can't be worth anything.

8 MR. GREENBAUM: I ought to rephrase it, your
9 Honor.

10 Q Mr. Siebel, after reconditioning, is the
11 physical condition of the cargo somewhat better than simple
12 scrap?

13 A When the cargo is reconditioned it has the same,
14 should have the same value, more or less, as it had as an
15 original commodity, and actually at that time, in '67,
16 there was a good scrap market, so it probably would have
17 been worth more in scrap --

18 THE COURT: How could there be a good scrap
19 market where this gentleman testifies he couldn't sell it?

20 THE WITNESS: Because it could be exported as
21 scrap, your Honor, but there was a poor market for steel
22 because the American steel mills were back in operation
23 and the coal strike was off, so they would be operating,
24 therefore there was no market for the finished product,
25 but for the export of scrap there was a very good market

1 jks

2 in 1967.

3 MR. GREENBAUM: I have no further questions.

4 CROSS EXAMINATION

5 BY MR. REPETTO:

6 Q Mr. Siebel, where is your office in New York?

7 A 11 Broadway, New York.

8 Q You never saw this cargo that we are discussing?

9 A Actually I may very well have. I was on that
10 pier in October 1967.

11 Q In October. You didn't make a particular
12 survey of this cargo?

13 A I did not survey this cargo.

14 Q And you didn't see it or any of it as it came
15 out of the ship?

16 A No, sir.

17 Q And you heard Mr. Juric's testimony -- you have
18 been present in court all day, haven't you?

19 A Yes, sir.

20 Q And you heard him testify that the bands were
21 broken off and on the floor of the warehouse?

22 A I did.

23 Q Did he say that?

24 A He did.

25 Q So they wouldn't show on the pictures of the

2 coils?

3 A But they do show in the pictures of the coils.

4 Q Some bands.

5 A That's right. There are bands showing.

6 Q Now, those pictures show, as we have heard, 131
7 coils and the other 152 were delivered. You have heard
8 that testimony?

9 A I heard the testimony, yes.

10 Q So you say that they were improperly packaged
11 for normal handling. Apparently 152 of them made it all
12 right, though, with normal handling.

13 A That is a very poor percentage.

14 Q It's about half. It's not very good, I'll
15 admit, but it made it.

16 A But his own statement was that there was approx-
17 imately 8 per cent damage.

18 Q Whose statement was that?

19 A Mr. Juric's statement, I believe, on the stand
20 this morning.

21 Q That is not what he said. I am sorry.

22 A I'm sorry, I apologize, you are right.

23 Q Now, could those coils have been properly handled
24 if someone saw what they were and handled them? If you
25 are a steel carrier, from what you could see in the pictures,

1 jks

2 do you think it was impossible to handle those?

3 A Under normal conditions it could have been
4 handled properly if they were set up for it, but as a
5 matter of pier representation, when you have a bill of
6 lading and a stowage plan of a vessel that shows bundles
7 you will lay out the pier for bundles and you may not have
8 the right equipment on hand to start with because you may
9 have been expecting bundles, not coils.

10 Q Of course, when this cargo was loaded -- and it
11 it was loaded on the Irish Larch; there is no difficulty
12 with that -- it was obvious that it wasn't bundles, wasn't
13 it, just from the pictures? I mean, they knew what
14 they were getting; it is unwrapped coils, isn't that
15 right?

16 MR. GREENBAUM: Objection. The witness is no
17 more qualified to testify to that than anybody else is,
18 unless they were there at the port of loading.

19 THE COURT: I gather his testimony is based on
20 the fact he is assuming these were coils that had bands
21 around them of one-quarter of an inch.

22 MR. GREENBAUM: Yes, sir, but I don't see how
23 that relates to the question.

24 THE COURT: Anybody can see what they are by
25 looking at them, can't they?

jks

MR. GREENBAUM: Yes, sir.

THE COURT: Obviously they are not rods.

MR. GREENBAUM: That's right, sir.

THE COURT: They are coils.

Q And that would have been obvious at every stage of their handling, what they were?

A Should have been, yes.

Q There was no covering on them to hide the bands or the size of the bands?

A As you know --

Q That you could see. You are limited to the pictures, I admit. You didn't see the cargo but --

THE COURT: The master must have known when they came on that they weren't rods.

THE WITNESS: I was just going to say, your Honor, that actually the bills of lading are usually signed by an agent for the master, and the master has sailed. His mate's receipt may have said coils, may have said coils of wire rods, and the bills of lading are usually drawn by the mate's receipts for the exceptions and so forth, but the common practice in the steamship business, in any liner trade, is for the liner service to accept the bill of lading from the shipper and/or freight forwarder and then to compare this with the dock receipts, endorse

1 jks

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Siebel-cross

101

2 the bill of lading or sign the bill of lading and then send
3 the originals to the shipper upon payment of freight, and
4 who then --

5 THE COURT: That doesn't absolve them of any-
6 thing.

7 THE WITNESS: But the bill of lading is drawn
8 without the master, nine out of ten chances, seeing it.

9 THE COURT: He should see it, though.

10 Q You heard testimony that this vessel was on
11 time charter?

12 A That's correct.

13 Q And a time chartered bill of lading was issued
14 for the master?

15 A The time charter, also, on the New York Produce
16 form, says "Load and stow".

17 Q Had you seen Transoceanic's pier layout for this
18 ship when it came in?

19 A I didn't see it for this ship, but I have seen
20 it several times.

21 Q You haven't seen it for this ship. You don't
22 know how this cargo was described to the terminal in
23 Chicago is what I am saying. Have you seen those
24 records?

25 A I did not see the records.

1 jks

127a
Siebel-cross

102

2 Q Have you seen the vessel stowage plan as to
3 how the cargo was described on the stowage plan?

4 A I did not see the stowage plan.

5 Q Now, the mate, even in a time chartered oper-
6 ation, makes out the stowage plan with the captain, isn't
7 that right; he has final approval?

8 A No, sir, that is not correct. The mate may
9 approve the stowage plan, but the stowage plan is made --
10 the final stowage plan is made by the loading stevedore
11 on a liner operation, and sometimes not actually completed
12 until after the vessel sails.

13 Q But the mate is in on the stowage of the ship?

14 A He is in on the stowage, and it is with his
15 permission and the master's permission that the cargo is
16 stowed.

17 Q That cargo comes on board and is stowed and he
18 is able to see the cargo as it comes on?

19 A Should be, yes.

20 Q You testified, I believe, that in your experience
21 the market for steel in general, in the United States,
22 dropped off in the middle of May.

23 A That's right.

24 Q Middle to the end of May. So that orders for
25 foreign steel coming out of the United States as of that

jks

time were at a lesser price than they had been before, is that right?

A You say coming out of the United States?

Q A buyer, a United States buyer, negotiating to buy foreign steel, be it wire rod or wire coil that we have here, was then offering a lower price than he had been, say, in late April or early May, is that right?

A Definitely.

Q But if he had made a contract in April, it would have been at the then-existing market price, and when the cargo got here that is what he would pay.

A Especially if it was an ultimate user, he would have made his contract and use it, but if it was a distributor or dealer who would then have to sell competitively on a local market, he would be definitely inclined to complain, argue, fight and not take delivery if he could get away with it.

Q What I am saying now is, I am a seller of steel, and I have a contract made in late April for May delivery of steel, and my steel arrives in good order, and I am going to be paid by my customer at the April price, not the late May price; isn't that true?

A No.

Q Then he is in breach of his contract to me.

jks

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2 A The buyer of the steel in Europe or the buyer of
3 the steel, if he bought it in Europe and shipped it on a
4 contract, he would ship on that contract, but if there
5 was a contract from an American buyer to a European shipper,
6 the man would have the cargo come into the States and he
7 could -- he would have to pay that price which he contracted
8 for, but his customers would only be paying him market
9 price.

10 Q That may well be.

11 A In which case he would suffer a loss and if he
12 could get out of receiving the cargo, he would.

13 Q CoSid's position, having sold the cargo to
14 McKnight, and the vessel arrives in late May, they will
15 collect from McKnight their contract price unless the
16 cargo is in an undeliverable state.

17 A Yes, but CoSid did not receive the cargo.
18 McKnight was the receiver.

19 MR. REPETTO: McKnight didn't receive all of the
20 cargo. It was on the pier.

21 I have no further questions.

22 REDIRECT EXAMINATION

23 BY MR. GREENBAUM:

24 Q Mr. Siebel, you testified earlier that it was
25 your belief that in view of the method of binding the

1 jks

2 cargo, the bands would have broken and slipped even in
3 normal handling, am I correct?

4 A That's correct.

5 Q Were you referring to normal handling for coils?

6 A I was referring, from the position I could see
7 in these and the other three pictures, that the type of
8 band used and the tightness of the band showed that in
9 reasonably normal handling a very large percentage of
10 this would have slipped.

11 The normal percentage to a cargo of this nature
12 is somewhere around the neighborhood of 2 to 2-1/2 per cent
13 of the cargo would not be received in a good tight order.
14 Normal stevedoring has a stevedoring damage incident saying
15 that the cargo is not in perfect condition of somewhere
16 between 2 to 5 per cent, depending on the conditions for
17 discharging, and when you have 131 out of 283 bundles,
18 you are not within any normal percentage.

19 Q Mr. Siebel, in referring to the photographs
20 which comprise Defendants' Exhibit D and the photographs
21 annexed to Plaintiff's Exhibit 5, do you see any substan-
22 tial amount of crimping in that wire?

23 A I examined these pictures and the only wires
24 that I can see actually crimped in here are the baling
25 wires which were used for holding the several bundles, the

1 jks
2 several coils together into bundles, and there are several
3 pieces of them which show, and they are different because
4 of the difference in diameter. They are distinguish-
5 ABLE.

6 MR. GREENBAUM: I have no further questions.

7 THE COURT: You may step down.

8 (Witness excused.)

9 THE COURT: Next witness.

10 MR. GREENBAUM: I have no more witnesses.

11 I would like to offer a document which bears the
12 letterhead of Joseph Cannata, if my adversary will stipulate
13 to its authenticity.

14 MR. REPETTO: What do you mean, stipulate to
15 its authenticity? That he sent it?

16 MR. GREENBAUM: Yes.

17 MR. REPETTO: I have no way of knowing, your
18 Honor. Mr. Cannata is dead. It is on his letterhead.

19 THE COURT: Do you have the file in this case?

20 MR. REPETTO: We have part of his file that we
21 got. That particular document I haven't seen, but
22 I have no reason to believe it wasn't sent out. I don't
23 know whether it's contents are true or not or what it is
24 based on, but for the fact that that was sent by Mr.
25 Cannata, I wouldn't deny it was sent.

1 THE COURT: This is a photostat.

2 MR. GREENBAUM: I don't possess the original,
3
4 your Honor.

5 THE COURT: You don't?

6 MR. GREENBAUM: I assume Joan Walker of Nedlloyd
7 or Salvesen has the original.

8 THE COURT: Have you ever asked them to produce
9 it?

10 MR. GREENBAUM: I have seen it, your Honor.
11 I have made a photograph from her copy.

12 I think the relevance of this is that CoSid's
13 claim appears to be in the neighborhood of \$10,000.
14 CoSid's witness testified that the claim included recooper-
15 ing. He didn't know how much or he didn't know if CoSid
16 actually paid the recoopering.

17 I want to indicate the recoopering is the
18 recoopering which Transoceanic attempted to collect but
19 did not.

20 THE COURT: There is no claim that they did.

21 MR. GREENBAUM: There is a claim for \$10,000 in
22 this action, whereas the damage per se was only a thousand
23 at the maximum.

24 MR. REPETTO: Your Honor, we are not claiming --
25 apparently it was sent. I have found two papers from

Mr. Cannata's file, both dated May 1968. They differ. They both go to Salvesen Line. I think maybe if he wants that in as an exhibit for what it is worth --

THE COURT: He is just trying to say that the damages is only \$8222, not \$10,206.

MR. REPETTO: I would agree to that, your Honor. At the time, that is, May of '68, within a month of discharge, the cargo had not yet been disposed of, apparently, and it may well be that he made a claim then on market or for anticipated recovering. I don't know.

The fact is that CoSid did not pay to recover the cargo, and the damages that we are seeking here are limited to the price they could have sold them for to McKnight, the 8000 figure, which is the invoice value of the 131 coils, and I think that is all they are entitled to. We were not seeking, are not now -- I can't answer for Mr. Cannata --

MR. GREENBAUM: As long as it is conceded that is the amount of the claim, fine. The question arose because the subrogation receipt to La Fortune was in the amount of 10,000 something, 10,052, I think.

MR. REPETTO: It is the insured value which we are not claiming for. Obviously the claims under the

policy are for different amounts than what you can recover from an ocean carrier.

THE COURT: The claim here is for \$8222.

MR. REPETTO: And 34 cents.

MR. GREENBAUM: Then it is not necessary to introduce this document, your Honor.

THE COURT: No.

MR. GREENBAUM: Thank you.

THE COURT: Defendant rests?

MR. GREENBAUM: Defendant rests.

THE COURT: Any rebuttal?

Plaintiff rests?

MR. REPETTO: Plaintiff rests. We have no rebuttal witnesses, your Honor.

THE COURT: All right.

What happened to all the other parties in this litigation?

MR. GREENBAUM: The stevedore was never served, your Honor, and the charterer has agreed to arbitrate the claim against the shipowner in London pursuant to the charter party.

THE COURT: Who is Great Lakes Terminal?

Are they the same as Oceanic?

MR. GREENBAUM: I don't know, your Honor.

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2 THE COURT: Mr. Repetto.

3 MR. REPETTO: International Great Lakes Terminal
4 Company, your Honor; I believe they were considered to
5 be Salvesen's local agent at the time. I don't know why
6 they were put in the suit.

7 THE COURT: They are not in the suit.

8 MR. REPETTO: I don't think there was any
9 service of them. They don't do business in New York.
10 As far as I know they have never been served.

11 MR. GREENBAUM: Mr. Lindstrom informs me they
12 were port agents of Nedlloyd.

13 THE COURT: Therefore, in view of Salvesen's
14 agreeing to arbitrate in London the action against them
15 will have to be dismissed.

16 MR. GREENBAUM: Yes, sir.

17 MR. REPETTO: As far as I know, they were never
18 served.

19 MR. GREENBAUM: They were served by the plaintiff
20 by Mr. Kennedy, and no further steps were taken to take a
21 default against them. They were served with a third
22 party complaint by the Irish Shipping, which led to this
23 arbitration discussion.

24 THE COURT: What is the title? I have a title
25 here of Jones & McKnight against S.S. Irish Larch, her

engines, et cetera, Irish Shipping, Limited, Charles Salvesen, Limited, International Great Lakes Terminal Company and Transoceanic.

Is that the title of this case?

MR. GREENBAUM: The title now is La Fortune against the same defendants. The complaint would not be dismissed against Salvesen, but the third party complaint would.

THE COURT: Well, he is not here, so I am going to dismiss it.

MR. GREENBAUM: Fine, your Honor.

MR. REPETTO: They were served, your Honor, on February 6, 1973.

THE COURT: They didn't show up.

MR. REPETTO: They didn't show up.

THE COURT: Do you move for a default judgment against them?

MR. REPETTO: Yes, your Honor, I move for that now.

THE COURT: Served when?

MR. REPETTO: February 6, 1973. On the marshal's return it was served upon Joan Walker, who testified as claims manager for Nedlloyd, the general agent of Salvesen, and we received the return of service back

1 jks

2 apparently February 12, 1973.

3 MR. GREENBAUM: Your Honor, I don't represent
4 Salvesen. I can't object on that ground to entering
5 a default. But I have had a lot of discussions with
6 Mr. Kennedy who had handled this case for Donovan & Donovan.
7 I asked him to take steps against Salvesen to get them
8 into the case, so that I could have some discovery of
9 the only party with documents which would have been
10 pertinent to the defense, and no steps were taken.

11 I think on behalf of Salvesen it would be unfair
12 to enter a default judgment at this time.

13 THE COURT: They are not here.

14 MR. GREENBAUM: As I say, I don't represent
15 them. I only wanted to call it to your Honor's atten-
16 tion.

17 THE COURT: They are not here. I assume they
18 were notified. You could still have taken their deposi-
19 tion, whether they were the party or not.

20 MR. GREENBAUM: Yes, sir. I am only pointing
21 out there was ample opportunity to bring them in, until
22 I ultimately, instead of serving a cross claim, I had to
23 ask your Honor to serve a third party claim to get them in.

24 THE COURT: They were served.

25 MR. GREENBAUM: But no steps were taken to

1 jks

2 actually bring them in or a default judgment taken.

3 THE COURT: What do you mean, no steps were
4 taken?

5 MR. GREENBAUM: No default judgment was applied
6 for, although we had two pretrial conferences since they
7 were served.

8 THE COURT: They are not here.

9 Were International Great Lakes and Transoceanic
10 never served?

11 MR. REPETTO: No, your Honor. They are both
12 out of state companies.

13 I asked for briefs as of yesterday. I never
14 received a brief from you, Mr. Goodenough.

15 MR. GOODENOUGH: We sent it up yesterday, your
16 Honor, yesterday morning.

17 THE COURT: I don't have it.

18 All right.

19 MR. REPETTO: We sent a brief with some proposed
20 findings.

21 MR. GOODENOUGH: I have a copy here, sir.

22 MR. GREENBAUM: I did receive my copy, your
23 Honor.

24 (Handed to Court.)

25 THE COURT: Where did you deliver it?

MR. GOODENOUGH: We told them to bring it to
your chambers, sir.

THE COURT: Is this the only copy you have?

MR. GOODENOUGH: No, sir, I have another copy.

THE COURT: Any other briefs needed?

MR. GREENBAUM: Yes, sir, I think a post-
trial brief is in order.

THE COURT: All right. One week, October 17,
1973.

All right.

MR. REPETTO: Thank you, your Honor.

THE COURT: Submit the exhibits with your briefs.

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PLAINTIFF'S EXHIBIT 1.

Invoice.

(See Opposite Page.)



CONTINENTALE DES PRODUITS SIDÉRURGIQUES

SOCIÉTÉ ANONYME AU CAPITAL DE 400.000 FRANCS

ADRESSE TÉLÉGRAPHIQUE
TALHARI-PARIS
TELEX. PARIS 20970

R. C. SEINE N° 55 B 7036

24, RUE DE PENTHIÈVRE - PARIS-8^e

7.04.222 & 224

TÉLÉPH. BALZAC 90-40
226-90-40

C. C. POST. PARIS 6278-27
I. N. S. E. S. 734.76.108 0175 Y

PARIS, le 5^e May, 1967

FACTURE N°
Invoice N° **67.190/EXP.**

EN EXECUTION DE : **Yr contract N°2046** Doit Messrs **JONES & MCKNIGHT INC. - CHICAGO**
In execution of & **2046** dated 10.1.67 Dr. through **COSID INC. - NEW-YORK.**

EXPEDITION PAR : **s/s. IRISH LARCH** PAYABLES :
Shipment per : **ANTWERP-CHICAGO** Payment : **against delivery of goods**

Marques et Nos Marks and N°	SPECIFICATION	POIDS Weight	Prix à la tonne Price per ton	MONTANT Total amount
	BRIGHT BASIC WIRE IN THOMAS QUALITY			
	SIZES COILS KILOS US\$ PER M/T. US\$ FOB ANTWERP			
ON RED TAGS COSID 2046 DIAMETER CHICAGO	"00" Gs. (8mm40)	93	53.290	
ON YELLOW TAGS COSID 2046 DIAMETER CHICAGO	"0" Gs. (7mm,76)	190	101.201	
	283	154.481	100.- 14,50	15.448,10 2.239,97 101,13 17.789,20 220,00 18.150,08
	Plus ocean freight ANTWERP-CHICAGO Plus insurance WPA 0,5 % on \$ 21.226		US\$ CIF	
	Plus 2 % our buying commission			
	US DOLLARS EIGHTEEN THOUSAND ONE HUNDRED FIFTY CENTS EIGHT.			E. & O.E.
	Value CIF CHICAGO. - We hereby certify that the above goods are of French origin. Ultimate purchaser in U.S.A. : Messrs JONES & MCKNIGHT INC. - 2900 South Springfield Ave., CHICAGO 23, Ill.			
	CONTINENTALE DES PRODUITS SIDÉRURGIQUES "COSID"			

141a

142a

PLAINTIFF'S EXHIBIT 1.

Bill of Lading.

(See Opposite Page.)



SALVESEN LINES

Managers : Chr. Salvesen & Co. Ltd., Leith
L. 60538/539. E.D.H.

PAGE 2
B/L N° 6-

SHIPPED on board the m.s.s. IRISK LARCH at ANTWERP the undermentioned goods
in apparent good order and condition, weight, measure, marks, numbers, quality, contents and value unknown
by EDM. VAN DYCK ET FILS SPRL. ANTWERP AS AGENTS.
for carriage to CHICAGO (or so near thereto as the Vessel may safely get and lie always afloat), to be delivered
unto TO ORDER.

or to his/her Assigns, he/they paying freight plus other charges incurred
in accordance with the provisions contained in this Bill of Lading.

NOTIFY: COSID INC. 30 EAST 42 ND. STREET. NEW YORK. N.Y. 10017. USA.

Marks and Numbers	Number and Kind of Packages	Shipper's Description of the Goods	Shipper's Gross Weight in Kilos Said to Weigh
ON YELLOW LABELS: COSID. 2046. 7.78 MM. N° ... CHICAGO. MADE IN FRANCE.		WIRE RODS. 190 BUNDLES.	101.201 K.
ON RED LABELS: COSID. 2045. 8.40 MM. N° ... CHICAGO. MADE IN FRANCE.		93 BUNDLES. 283	53.280 K. 154.481 K.

FOR DIRECT DISCHARGE INTO TRUCKS AND RAILS.
FREIGHT PREPAID.

Oceanfreight PREPAID / TO BE COLLECTED :

Total Freight

SEAWAY TOLLS: TO BE COLLECTED :

CHARGES

coll. fee 5 %

TOTAL TO BE COLLECTED :

The goods specified in this Bill of Lading are to be delivered by the shipper to the consignee at the place of destination, and the shipper is to be responsible for the goods until they are delivered to the consignee.
The goods specified in this Bill of Lading are to be delivered by the shipper to the consignee at the place of destination, and the shipper is to be responsible for the goods until they are delivered to the consignee.

Subject to the terms of the transshipment clause contained herein.

The goods specified herein will be forwarded by the Shipowners as Agents for shippers to the vessel's loading port. No liability whatsoever for loss or damage shall attach to the Shipowners before the goods come into their actual custody. Shippers' remedy, if any, to be solely against the party or parties in whose custody the goods may be at the time such loss or damage occurs.
Unless destined to a bonded place, a Bill of Lading and certified consular invoice must accompany the goods or reach the carrier's agent at port of transshipment before property arrives at the latter port in order to pass the papers through the Custom-House and save delay and general order charges which, if incurred, will be for risk and account of the goods.

In WITNESS whereof the Master of the said Vessel has signed the original Bills of Lading, all of his tenor and date, one of which being accomplished, the others to stand void.

Dated at Antwerpen the

9 MAI 1967

COPY

As Agents for the Master

Westbound

143a

144a

PLAINTIFF'S EXHIBIT 3.

Subrogation Receipt.

(See Opposite Page.)

15250'

SUBROGATION

NAVIRE : *lust darch*
VOYAGE : *Amers / Chicago*

Nous soussignés *Cosid*
demeurant *New York*

reconnaissons avoir reçu des Assureurs le montant de l'indemnité
d'assurance relative aux manquants et avaries ayant affecté les mar-
chandises ci-après faisant l'objet du :

Connaissance n° 6 établi à *Amers*

le *9/5/67*

283 bundles Bought Basic Wire in Thomas

En conséquence, nous subrogeons les dits Assureurs dans tous
nos droits, actions et recours contre les Transporteurs et toute autre
personne responsable.

Fait à *New York* *8 Juillet, 1968*

COSID INC.
Ed' J. J. J.
EDWARD J. DELBOURG,
Vice-President.

145a

146a

PLAINTIFF'S EXHIBIT 4.

Subrogation Receipt.

(See Opposite Page.)

11/79.986 - PW -

CHEGARAY
-DR :
15.260

ACTE DE SUBROGATION

Nous soussignés COSID INC. 30 EAST 42 ND. STREET NEW-YORK
reconnaissons avoir reçu la somme de \$ 10.052,19
des Cies d'Assurance LA FORTUNE
et autres figurant sur la dispache N° 34.193
du 26/7/1968 pour pertes et avaries survenues aux
marchandises ci-après :

190 BUNDLES

expédiées par navire "IRISH LARCH"
Voyage MAGASIN-USINE/ANVERS/CHICAGO :

Connaissance N° 6 en date à ANVERS du 9 MAI 1967

En considération du paiement qui nous est ainsi effectué,
nous subrogeons les Compagnies d'Assurances précitées dans tous
nos droits, actions et recours contre toutes personnes responsables
(transporteurs et/ou autres), en raison des dites pertes et avaries.

En tant que de besoin, le présent acte vaudra également
cession et transfert aux dites Compagnies d'Assurances de tous nos
droits, actions et recours de ce chef.

Fait à New York le 31 Juillet 1968
COSID, INC.
30 EAST 42ND STREET
NEW YORK, N.Y. 10017 Pres
COSID INC.

147a

148a

PLAINTIFF'S EXHIBIT 5.

Survey and Nine Accompanying Photographs.

(See Opposite Page.)

CERTIFICATE OF DAMAGE (PAGE ONE)
(REPORT OF SURVEY)

THIS IS PAGE ONE OF A THREE PAGE REPORT.
ALL THREE PAGES MUST BE USED FOR REPORT.

692

A REPORT ON THE CONDITION OF SHIPMENT HEREIN DESCRIBED, WAS REQUESTED BY:

NAME COSID, INC.		ADDRESS 30 East 42nd St., New York, NY		G. A. B. FILE NUMBER 55511-32365	DATE 1/25/68 ✓
DESCRIPTION OF SHIPMENT	SHIPPER COSID, INC.		ADDRESS Antwerp		COUNTRY France
	CONSIGNEE Jones and McKnight, Inc.		ADDRESS Chicago		TELEPHONE 521-1000
	NO. OF PKGS. 283 Coils	CONTENTS OF PKGS. Bright Basic Wire	MARKS AND NUMBERS 2045 Red Tags 2046 Yellow Tags	INVOICE DATE 5/19/67	INVOICE VALUE 20,740.84
	CARGO LOADED AT Antwerp, France		VESSEL'S NAME S/S "Irish Larch"		DATE LOADED 5/5/67
CARRIAGE INFORMATION	TRANSHIPPED AT -----		VESSEL'S NAME -----		DATE TRANSHIPPED -----
	LOCATION ARRIVED AT Chicago, Illinois	DATE ARRIVED 5/19/67 ✓	TRANSFER TO LIGHT. UNLOADING COMPLETED AT -- Transoceanic Term-Chgo		DATE COMPLETED 5/24/67 ✓
	OCEAN B/L NUMBER(S) #6	OCEAN B/L DATE 5/9/67	INLAND B/L NUMBER(S) --		INLAND B/L DATE --
BILL OF LADING INFORMATION	EXCEPTIONS ON OCEAN B/L None				
	LETTER OF INDEMNITY YES <input checked="" type="checkbox"/> NO <input type="checkbox"/>	STATE PARTICULARS Certain damages			
CUSTOMS INFORMATION	DATE ENTERED CUSTOMS 5/24/67		WEIGHT/AMOUNT ENTERING 349,572		DATE RELEASED FROM CUSTOMS --
	DATE REMOVED FROM CUSTOMS 5/24/67		DATE DUTY PAID --		SOUND CONDITION DUTY \$ --
	DATE RESHIPED --		RESHIPED BY --		RESHIPED TO --
	DATE OF ARRIVAL --		DATE RELEASED TO CONSIGNEE --		DATE EFFECTIVELY DELIVERED --
DELIVERY INFORMATION	DATE IN CONSIGNEE WAREHOUSE --		DATE IN CONSIGNEE WAREHOUSE --		

PARTICULARS OF SURVEY

REPORT OF SURVEY MADE BY M. J. Juric AMICABLY NAMED ON 6/9/67

TO ACT AS JOINT SURVEYOR, BY MUTUAL AGREEMENT OF THE PARTIES. PLACE OF SURVEY Transoceanic Warehouse, Chicago, Illinois CARGO DELIVERED AT PLACE OF SURVEY ON No

DATE OF SURVEY 6/14/67 NAME OTHER SURVEYOR, IF SINGLE SURVEYOR NOT AGREED ON None

NAMES AND TITLES OF PERSONS PRESENT AT SURVEY

<u>Leo Tabert</u>	<u>Jones & McKnight</u>
<u>M. J. Juric</u>	<u>General Adjustment Bureau, Inc.</u>

EXTERNAL CONDITION OF SHIPMENT WHEN DELIVERED AT PLACE OF SURVEY

Bent wire, dirty, unbanded, coils tangled.

EXTERNAL AND INTERNAL CONDITION OF PACKAGES AS NOTED AT CUSTOMS

NATURE OF PACKING coils bent & unbanded WAS PACKING SUFFICIENT? Yes



CERTIFICATE OF DAMAGE (PAGE TWO)
(REPORT OF SURVEY)

TO BE USED ONLY WITH PAGE ONE OF
CERTIFICATE OF DAMAGE FORM 692.

NAME OF PERSON REQUESTING SURVEY

ADDRESS

CAS FILE NUMBER

DATE

COSY, INC.

30 East 42nd St., New York

55511-32365

1/25/68

PROTEST FILED AT Not known if one filed

DATE --

PARTICULARS OF DAMAGE

STATE FULLY CAUSE OF LOSS AND/OR DAMAGE It is the surveyor's opinion that rough handling, either when loading or unloading vessel, or in handling on premises of warehouseman. Storage area within warehouse not adequate. Equipment used to handle coils improperly operated.

IF DAMAGE MIGHT HAVE BEEN CAUSED BY SEAWATER, WAS TEST FOR SALT MADE? --

BY WHOM (ATTACH REPORT) --

IN CASE

OF SALE OF DAMAGED GOODS, WERE PROCEEDS OF SALE PAID TO CONSIGNEE? --

CLAIMS AGAINST CARRIER(S)

WAS CARGO STOWED ON DECK ANYTIME DURING THE VOYAGE? No IF SO, STATE PARTICULARS

DID CONSIGNEE GIVE CLEAN RECEIPT TO VESSEL AND/OR LIGHTER OWNER? Not known

DID CONSIGNEE FILE WRITTEN CLAIM AGAINST CARRIER? Yes DATE 6/8/67

IF NOT, THIS MUST BE DONE BY CONSIGNEE IMMEDIATELY!

COMMENTS AND REMARKS

Enclosed and part of this report are the following documents: Ocean Bill of Lading #6; Insurance Certificate #151; French Line Invoice; Invoice; Copy of insured Notice of Interest filed with Salvensen Lines and also with the Transoceanic Terminals; Letter and itemization of charges against salvage material; and photographs.

CERTIFICATE OF DAMAGE (PAGE THREE)
REPORT OF SURVEY

TO BE USED WITH PAGES ONE AND TWO OF
 THE CERTIFICATE OF DAMAGE FORM 692.

NAME OF PERSON REQUESTING SURVEY: **COSID, INC.** ADDRESS: **30 East 42nd St., New York** GAB FILE NUMBER: **55511-32365** DATE: **1/25/68**

SCHEDULE OF DAMAGE

MARKS AND NUMBERS	NUMBER OF EXCESS Coils	DESCRIPTION OF GOODS AND EXTENT OF LOSS AND/OR DAMAGE	INVOICE VALUE	SALE OF DAMAGED GOODS		EXCESS DAMAGE EXAGGERATED
				SOUND MARKED VALUE DUTY PD. STATE DISC., IF ANY	GROSS PROCEEDS OF SALE	
On Red Tags Cosid #2045 Dia- meter Chicago		Bright Basic Wire <u>Sizes</u> 00 Ga. 47 coils, 59,318 lbs	\$361247	Total Loss NOTE		\$3,612.47
On Yellow Tags Cosid #2046 Diameter Chicago		Bright Basic Wire <u>Sizes</u> 0 Ga. 84 coils, 98,666 lbs. <i>1.1 - 154,984</i>	\$875940	Total Loss NOTE		\$8,759.40 <i>12.321, 94</i>

* SHOW DOLLARS IF MEASURE OF LOSS IS BASED ON REPAIR

THIS CERTIFICATE IS ISSUED WITHOUT
 PREJUDICE TO THE RIGHTS OF THE INSURERS
 AND IS SUBJECT TO THE TERMS AND
 CONDITIONS OF THE POLICY.

GENERAL ADJUSTMENT BUREAU, INC.

SERVICE FEE _____
 EXPENSES _____
 INCIDENTAL EXP. _____
 TOTAL BILLING _____

SURVEYOR _____ BY _____ TITLE _____

CERTIFICATE NUMBER _____ DATED _____

PHOTOS

Company Claim No. _____

Policy No. # 157

Insured Coyd Inc.

GAB File No. 55571-32365

Claimant Jones & McKnight, Inc.



Film ☒ Polaroid

☐ Negative

Picture No. 1

Date Taken 6-14-67

Time PM

By M. J. J. J.

Location and View Transoceanic Warehouse



Film ☒ Polaroid

☐ Negative

Picture No. 2

Date Taken 6-14-67

Time PM

By M. J. J. J.

Location and View 11

11

11

PHOTOS

Company Claim No. _____ Policy No. _____

Insured _____ GAB File No. _____

Claimant _____



Film ☒ Polaroid

☐ Negative

Picture No. 3

Date Taken / /

Time : :

By

Location and View



Film ☐ Polaroid

☐ Negative

Picture No. 4

Date Taken / /

Time : :

By

Location and View

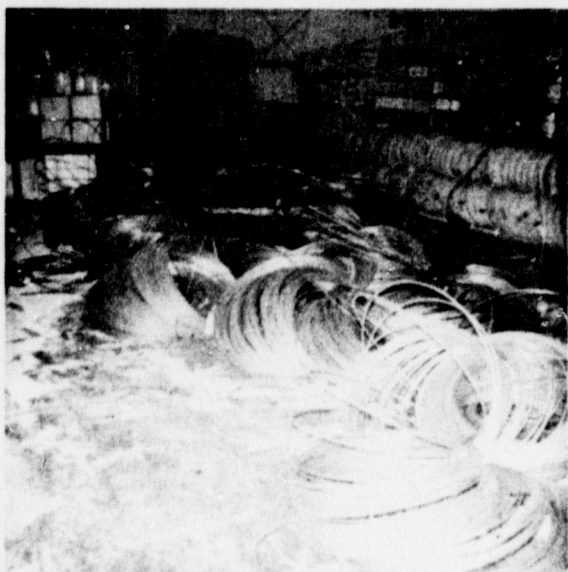


PHOTOS

Company Claim No. _____ Policy No. _____

Insured _____ GAB File No. _____

Claimant _____



Film ☒ Polaroid

☐ Negative

Picture No. 5

Date Taken 11

Time 11

By 11

Location and View 11

11

11

11



Film ☒ Polaroid


☐ Negative

Picture No. 6

Date Taken 11

Time 11

By 11

Location and View 11 

11

11

11

PHOTOS

Company Claim No. _____ Policy No. _____

Insured _____ GAB File No. _____

Claimant _____



Film ☒ Polaroid

☐ Negative

Picture No. 7

Date Taken 11

Time 11

By 11

Location and View 11

11



Film ☒ Polaroid

☐ Negative

Picture No. 8

Date Taken 11

Time 11

By 11

Location and View 11

11

PHOTOS

Company Claim No. _____ Policy No. _____

Insured _____ GAB File No. _____

Claimant _____



Film ☒ Polaroid

☐ Negative

Picture No. 9

Date Taken 11

Time 11

By 11

Location and View 11

11

Film ☐ Polaroid


☐ Negative

Picture No. _____

Date Taken _____

Time _____

By _____

Location and View 

149a

150a

PLAINTIFF'S EXHIBIT 6.

Survey Report.

(See Opposite Page.)



✓ 6/22/67 F

INTERNATIONAL-GREAT LAKES SHIPPING COMPANY

ONE EAST WACKER DRIVE - CHICAGO, ILLINOIS 60601 - TEL. 527-4400

TWX 312-222-9666

CS ☐ CH ☐ COL ☐ ALA ☐
3 ☐ H ☐ PCW ☐ MK ☐

June 20, 1967

AIR MAIL

JUN 22 1967

NEDLLOYD LINES INC.
25 Broadway
New York, New York 10004

JJT ☐ CLA ☐
CP ☐ SOL ☒

RE: SURVEY REPORT RE M/V "IRISH LARCH" AT CHICAGO MAY 31, 1967

Dear Sirs:

Please find enclosed captioned survey report in triplicate covering the discharge of the M/V IRISH LARCH at Chicago.

Trusting you will receive the above in good order, we remain

Yours very truly,

INTERNATIONAL-GREAT LAKES
SHIPPING COMPANY, As Agents

H. E. Oudijk
Operations Manager

HEO:cm
Enclosures

CABLE: SCANLAX OAK PARK, ILL.
24 HOUR SERVICE IN
THE CHICAGO AREA

RAGNAR SOGNES AND ASSOCIATES
Marine Surveyors and Consultants
733 N. HAYES AVENUE, OAK PARK, ILLINOIS 60062
AREA CODE 312 - 545-1413 & 545-4145

PORTS OF:
LAKE MICHIGAN
LAKE SUPERIOR

*Survey Report*NO. 565

Date issued: 6/10-67

Name of Vessel: "IRISH LARCH"Voy. No. 51

CERTIFIED, at the request of Salvesen Lines c/o: Int. Great Lakes Shipping Co., Chicago, this Office did, on May 31, 1967 and on subsequent dates attend survey onboard the captioned vessel for the purpose of ascertaining the general condition of Cargo and Stowage, and also to observe cargo/handling operation, and herewith submits report without prejudice:

The vessel arrived at T.T.C., Chicago, on May 30, 1967.

Discharge/Loading commenced at 0800 Hrs. " 31, 1967

- " - -" - completed at 1600 " June 1, 1967

Weather during cargo operation: GOOD

Method of operation: Ship's winches: X

Shore cranes: X

The Hatches were inspected in closed/open condition and found:

	Hatch covers:	Ventilators:	Sign of wetting:
# 1 Mc Gregor type steel hatches in good condition.		Cowls on forecastle head capped.	NO
# 2 - " -		Samson posts and high raise in good cond.	"
# 3 - " -			"
# 4 - " -			"
# 5 - " -			"

The cargo for this Port was generally stowed as follows:

- # 1 L.H. - Various steel, wrapped and unwrapped in apparent good order, - photo.
- # 2 T/D - 4 cars in good condition (no shifting).
- # 2 L.H. - Various structural steel, good condition - photo
- # 3 T/D - 4 autos and various general cargo in good cond. Wine in lockers.
- # 3 D/T - Wire coils, some bands broken and several bdl's. partly loose - photo.
- # 4 T/D - Various general cargo, some ctns. disturbed and/or broken, reportedly stevedores Montreal.
- # 4 L.H. - Various steel and Kegs of bolts, some damage to Kegs noted, additional damage noted during discharge.
- # 5 - Various steel in good order.

Our inspection of cargo in the Holds disclosed:

- A) STOWAGE: Good except some disturbed cartons in # 4 T/D and some coils in D/T in slanting position.
- B) PACKING: Generally satisfactory.

"IRISH LARCH"

DISCHARGE was observed on May 31, and June 1, 1967 and finally at time of completion with findings/damages as follows:

B/L	Description of cargo:	Description of damage / cause / extent:
Antw. 2:	Wire rods S.I.C. -	Some B/B and slight bending/handling.
3:	Rounds and flats -	Wrapping partly torn also forklift handling.
4:	Hexagon nuts -	Kegs gen. good in stow, - slight spillage on pier.
5:	Cases glass -	Apparently good condition in stow.
6:	Cosid-wire rod -	See photo from D/T - B/B on many bdl. and more twisting and loose during discharge and forklift handling on pier. Rope slings used for discharge. Est. 8% more or less loose and with strands twisted.
7:	40' I Beams -	Condition good in stow (#4 L.H.), except end corner dents on 2 pcs. One pcs. flange dented 4 places noted on pier, also minor sling / nicks.
8:	-do.- -do.-	Condition good in stow # 2. Also generally good on pier except 2 pcs. dented and slightly bent.
9:	Hand rails -	Good condition except slight forklift dents.
10:	Var. angles, squares, flats	in generally good condition (minor dents).
11:	Angles	in generally good condition. W.P.T. Minor corner dents. Steel all blue.
12:	Rounds	-do.- -do.-
13:	Re-bars	OK - except a few ends bent/also forklift.
15:	Various angles, flats, squares and rounds	in generally good condition (mainly 20') W.P.T. and slight forklift dents.
16:	40' angles	in good condition except one bdl. noted on pier slightly bent.
17:	Rounds	in good condition (minor ends)
18:	40' Angles	OK - except minor corner dents on a few.
19-21:	Various Beams, Angles, flats and Rounds -	generally good condition.
23/26:	Drums and cases of Steel wire	in generally good condition in stow.
27:	Rebars in generally	good condition except slight ends and also forklift handling (40' lengths).

Le Havre:

B/L 2-3

& 8: Bolts and nuts - see photo in # 4 Hold, a few tops broken and some spillage noted in Hold (partly caused by tipping/denting when handling other cargo.) Stevedores requested to R/c loose bolts and nuts and to take care not to mix sizes.

Note: At 1958 Hrs. 5/31 - we observed Kegs dropped from pallet when sling pulled two blocks by crane, causing damage to light/davit and scratches on Port side lifeboat. Nuts spilled. Stevedores to repair damage.

Various B's/L - Wine and Cognac in generally good condition except as noted at time of loading and at which time appr. 9 ctns. (various marks) noted in B/o - r/c.

* B/L 18: RFF - ctns. in # 4 T/D disturbed and 4 open with sign of pilferage.

* " 14: Mark AS - Bicycle parts also disturbed in stow with one cs. # 16, broken.

* " 7: Personal Effects marked POMMIER, one ctn. open/pilferage.

*) This damage was reportedly caused by stevedores at Cleveland.

Css. of Stainless steel appeared to be in good condition.

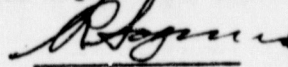
T 4: 8 Autos in good condition except what noted at time of loading (no damage in transit).

D) After completion of Discharge Holds were inspected and found:
Ceilings: Generally good Bilges/covers: OK
Cargo battens etc. Generally in place.

REMARKS:/incl. cargo handling on pier: With the exception of some disturbance of css. in # 4 T/D, bands broken on wire bdl. in D/T and partly loose coils and some broken heads on Kegs of nuts (# 4) the cargo found in generally good condition in stow. Stevedore damage noted to drop of Kegs/nuts and miscellaneous forklift handling on pier.

Note: One pad-eye and guay broken by stevedores at 1800 Hrs. 5/31-67 (Preventer - improperly placed.)

Ragnar Sognnes and Associates


R. Sognnes



INTERNATIONAL-GREAT LAKES SHIPPING COMPANY

CABLE ADDRESS: "INGLA"

ONE EAST WACKER DRIVE - CHICAGO, ILLINOIS 60601 - TEL. 527-4400

TWX 312-222-9666

June 6, 1967

Transoceanic Terminals
9355 South Kreiter
Chicago, Illinois 60617

RE: NOTICES OF STEVEDORE DAMAGE RE M/V "IRISH LARCH"

Dear Sirs:

Please find enclosed three sheets of Notices of Stevedore Damage (with six copies) re M/V IRISH LARCH.

We are requesting that you sign these notices and return all copies, except the ones marked "Transoceanic Terminal", at your earliest convenience.

Thanking you in advance for your kind attention in this matter, we remain

Yours very truly,

INTERNATIONAL-GREAT LAKES
SHIPPING COMPANY, As Agents

H. E. Oudijk
Operations Manager

REO:cm

cc. Nedlloyd Lines - New York

Port of CHICAGO 1st Amend 29A.

NOTICE OF STEVEDORE DAMAGE.

M.V. : IRISH LARK

Date & Time : 1/5/67 . . . 13.30 .

To : Wad Lloyd & Co. N.Y.

In the course of loading/discharging the above named vessel the following damage has occurred :

Hatch	Port of origin	Port of destination	Description, number & marks, if possible B/L number.	Remarks
Special Gauge Lecher # No. 3	Le Havre.	Chicago	Cardboard carton Forward I Crn. No. 1092.	4 bottles broken when stevedores allowed carton to fall from sling.
"	"	"	Cardboard carton Rene Anjou Wine. Case No. 407 Code No. 89284.	N/A. Unknown No. of bottles broken.
"	"	"	Cardboard carton Forward I Crn No. 11058	Carton dropped by stevedore. 4 bottles broken.
"	"	"	Case No. 430. Code No. 89284.	Dropped and unknown No. of bottles broken.
"	"	"	Case No. 437 Code No. 89284.	N/A.
"	"	"	Case No. 44 Code No. 93112.	1 bottle pilfered by stevedores.

Please note that I hold you responsible for the damage as stated above and for any expenses which may be incurred in the repair thereof.

The undersigned, authorized Representative of the above mentioned Stevedore is confirming herewith to have received and acknowledged this Notice of Stevedore Damage.

Signed : D. H. Day 4/7/67

Title : Adm. Asst.

Signed : [Signature]

Master.

Signed : [Signature]

Ch. Officer.

Port of CHICAGO. 1st Amend 29A.

NOTICE OF STEVEDORE DAMAGE.

M.V. : IRISH LARCH. Date & Time : 1/6/67. 11.30.

To : Ned Lloyds & Co. N.Y.

In the course of loading/discharging the above named vessel the following damage has occurred :

Hatch	Port of origin	Port of destination	Description, number & marks, if possible B/L number.	Remarks
Special Cargo Locker # No. 3	Le Havre.	Chicago.	Cabernet Anjou Wine. Order No. C-1026 Import Permit No. Ill 1-863.	Carton dropped by stevedores and unknown number of bottles broken.

Please note that I hold you responsible for the damage as stated above and for any expenses which may be incurred in the repair thereof.

The undersigned, authorized Representative of the above mentioned Stevedore is confirming herewith to have received and acknowledged this Notice of Stevedore Damage.

Signed : D. H. Day 6/17/67
Title : Adm. Asst.

Signed : [Signature]
Master.
Signed : [Signature]
Ch. Officer.

Port of CHICAGO. 1st Amend 29A.

NOTICE OF STEVEDORE DAMAGE.

M.V. : IRISH LARCH. Date & Time 1/6/67 13 30

To : Ned. Lloyd & Co. N.Y.

In the course of loading/discharging the above named vessel the following damage has occurred :

Hatch	Port of origin	Port of destination	Description, number & marks, if possible B/L number.	Remarks
Special Cargo Locker (No. 3)	Le Havre	Chicago	Case No. 451 Code No. 89284.	Dropped and unknown No. of bottles broken.
"	"	"	Maurice Poular Cardboard carton. Code No. 9150.	Carton opened and contents exposed but intact.
"	"	"	Cardboard carton Grand Vin Rouge. Superior. Case No. 75 Code No. 881 No. 91017	1 bottle pilfered by stevedores.
"	"	"	Pine Charlemon Case No. 61096.	1 bottle pilfered by stevedores.
"	"	"	Pinet Charlemon Case No. 61180.	Case damaged. Contents intact.
"	"	"	Pinet Charlemon Case No. 1144.	Case dropped and unknown No. of bottles broken.

Please note that I hold you responsible for the damage as stated above and for any expenses which may be incurred in the repair thereof.

The undersigned, authorized Representative of the above mentioned Stevedore is confirming herewith to have received and acknowledged this Notice of Stevedore Damage.

Signed : D. H. Day 6/7/67
Title : Adm. Asst.

Signed : [Signature]
Master.
Signed : [Signature]
Ch. Officer.

RECEIVED

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152a

DEFENDANTS' EXHIBIT A.

Photograph.

(See Opposite Page.)



IRISH LARCH

5/31/67 - at 1945 Hz.

Port D/T.

Wise rod - coils
generally fair to good
Condition. Some
bands broken.

No rust

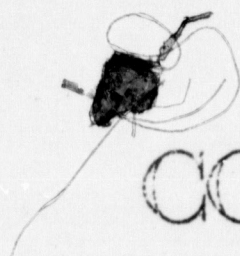
153a

154a

DEFENDANTS' EXHIBIT B.

Notice of Claim.

(See Opposite Page.)



COSID Incorporated

30 EAST FORTY-SECOND STREET • NEW YORK, N. Y. 10017

Tel. phone: (Area Code 212) 622-11248
Cable: AMCOSID, NEW YORK
Telex: 224204 • AMCOSID

June 8, 1967

Phelps Agency Inc.
327 So. La Salle St.
Chicago, Ill. 60604

To the Master and/or Agent and/or Owner
of the s/s "IRISH LARCH"

Gentlemen:

Upon arrival of the steel for our account
on above captioned vessel, certain damages
and/or shortages were found to exist.

In behalf of all interested parties, we are
herewith holding you responsible for said
damages and/or shortages, and all
consequences thereof.

Yours very truly,

COSID, INC.,

SC/on

c.c. Mr. Knopp, Gen. Adjust. Bureau
Mr. Larry Hervis

155a

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DEFENDANTS' EXHIBIT C.

Covering Letter Dated January 5, 1968 With Accompanying
Breakdown of Costs.

(See Opposite Page.)

January 5, 1968

General Adjustment Bureau
1935 West 87th Street
Chicago, Illinois 60620

Attention: Mr. M.J. Juric *File HJ-5-7575*

M/S "IRISH LARCH" arrived Chicago 5/30/67
Ant/Chic B/L #6

Gentlemen:

Referring to telephone conversation today we enclose hereto break'down of charges accrued to date against the wire under subject B/L part of which is still in our warehouse.

As far as your question regarding authorization for re-coopering is concerned we beg to point out that this was done by us in our capacity of bailees and acting in the exercise of ordinary care to prevent subsequent damages to the cargo.

You will notice that the break'down contains one item i.e. an out-handling charge of \$157.71, which service has not yet been performed.

Please keep us advised of further development in this case and also when we might expect that subject coils will be picked up.

Very truly yours,

TRANSOCEANIC TERMINAL CORPORATION

M. Lindstrom
Claims Manager

c.c. Capt. J.W. Baker
)Enc:)

TRANSCONTINENTAL TERMINAL CORPORATION

M/V "IRISH LARCH"
 ANTWERP/ B/L #6 (Cosid Inc.)
Wire Rod - 283 coils

RECOOPERING:

6/6-6/7-6/8-6/9

EIGHT (8) HRS. PER DAY

6/19-6/20-6/21-6/22

2	Labors	16 Hrs. x 8 days @ \$6.50 P/H	\$832.00
1	Lift Oper.	8 Hrs. x 8 days @ \$6.50 P/H	416.00
1	Checker	8 Hrs. x 8 days @ \$6.50 P/H	416.00
1	Foremen	8 Hrs. x 2 days @ \$10.00 P/H	160.00
1	Lift Truck	8 Hrs. x 8 days @ \$2.50 P/H	<u>160.00</u>

\$1984.00

STORAGE CHARGE:

131 coils - 157,713#

10¢ per cwt. per month

STORAGE FOR:

June	# 157.71
July	157.71
August	157.71
September	157.71
October	<u>157.71</u>
Nov-Dec-January	473.13

1,261.68

OUT-HANDLING CHARGE:

157.713# @10¢ per cwt. \$ 157.71

IN-OUT HANDLING CHARGE
 ON REJECTED LOAD

32,481 @	10¢ per cwt.	32.48
32,481 @	10¢ per cwt.	<u>32.48</u>

TOTAL AS OF 1/5/68

222.68
\$3,468.16

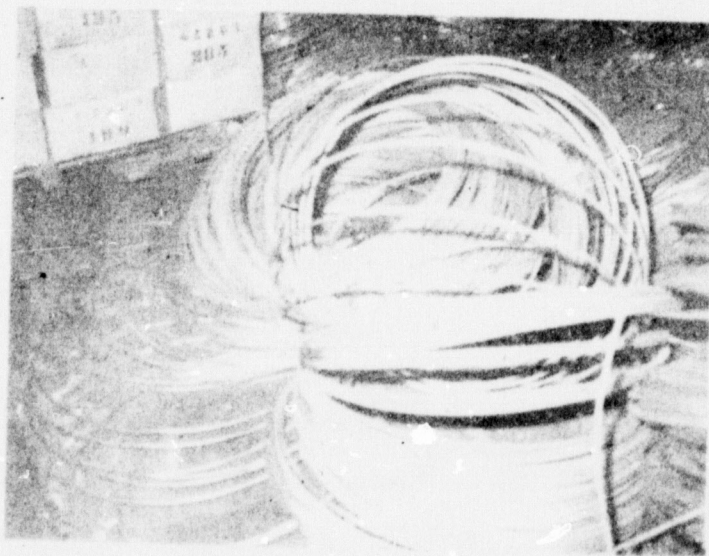
157a

158a

DEFENDANTS' EXHIBIT D.

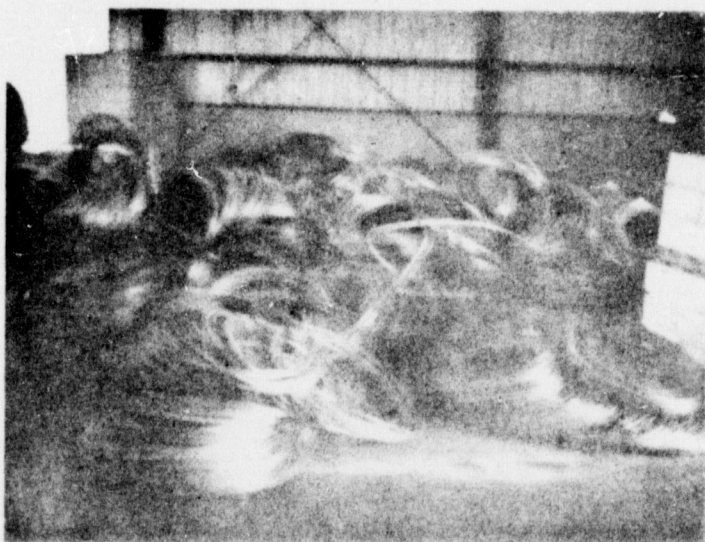
Three Photographs.

(See Opposite Page.)

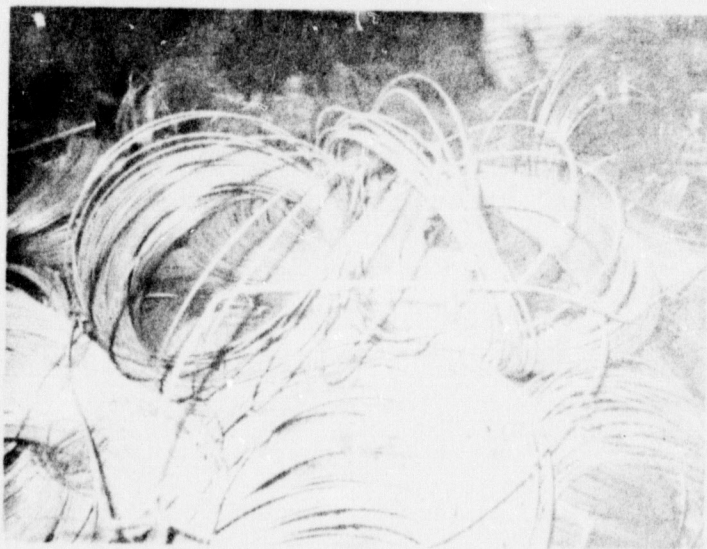


Quik Larch Veg 1 W 1967
ant/Chgs B/L #

Bright Wire manifested as
Wire Rod - As pictures testify
wire stripping unable to securely
hold wire spool resulting in
loosening while in motion of travel
causing wire to go out of
proportion resulting in excessive
costs -
Steve Gehring



Irish Jack
Voy 1/W 1967



Irish Larch
Voy 1 / w / 1967

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3 COPY RECEIVED

APR 23

1874

HEALY & BAILLIE